

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE

GENERAL HEARING

April 30, 2009

7:00 p.m.

in

Senior Center 806 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Tad Heuer, Member

Douglas M. Myers, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:15 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: I will call the meeting of the Zoning Board of Appeals to order. The regular agenda doesn't start until 7:30. And we have one continued case and the petitioner has not shown, so far at least. We do have one case where someone is seeking an extension of relief we had granted before. This was a decision that we filed on May 23, 2008. It granted a variance to the owners at 38 Porter Street in Cambridge. Louis and Virginia Pacici (phonetic). A variance to construct a non-conforming single-family dwelling on a lot containing a non-conforming single-family dwelling that has been approved for demolition. And there is a letter in the file from the

petitioner saying, "I am requesting" -- it's addressed to the Board. "I am requesting a six month extension on my variance petition, case No. 9628, 38 Porter Street which was decided May 8, 2008. Due to unexpected illness, emergency brain surgery performed in March and recuperation I was unable to keep on schedule. Your understanding and approval would be deeply appreciated in this matter. Sincerely, Louis Pacici.

I think that's a pretty unique request. An unfortunate -- does anyone have any comment or on the request for the six-month extension of variance?

(No response.)

CONSTANTINE ALEXANDER: I'll make a motion.

I move that we grant the six-month extension to the variance that had been granted to the petitioners at 38 Porter Street.

All those in favor, say "Aye".

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Extension granted.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(7:20 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9729, 12 Mount Vernon Street.

Is there anyone here who wishes to be heard on that petition?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one is here. And for the record, we have tried to contact the petitioner to see why, as in this case it's a she, she is not here. We have been unsuccessful. We have no reason to know why she is not here. She was certainly notified that this case was being continued to this date. Since we don't know the reason why the petitioner is not

here, consistent with past practice I would suggest that we continue the case one more time to the next available date and direct Mr. O'Grady to contact the petitioner and to provide the petitioner that if she doesn't show the next time, we will move ahead and decide this on the merits.

MALE AUDIENCE ATTENDEE: May I ask one question about the case?

CONSTANTINE ALEXANDER: I'm sorry?

MALE AUDIENCE ATTENDEE: May I ask one question about the case?

CONSTANTINE ALEXANDER: Yes.  
Well, we don't want to get into --

MALE AUDIENCE ATTENDEE: I just want to make sure that there are letters that were submitted by the neighbors --

CONSTANTINE ALEXANDER: There are letters in here.

MALE AUDIENCE ATTENDEE: -- in the case file.

CONSTANTINE ALEXANDER: Yes, I can tell you who submitted letters if you like to know that.

MALE AUDIENCE ATTENDEE: I'm one of the authors.

CONSTANTINE ALEXANDER: Okay. There's more than one letter in the file.

MALE AUDIENCE ATTENDEE: I just wanted to check to see that the case file was complete. Thank you.

CONSTANTINE ALEXANDER: Sean, when is the next available night to continue this case?

SEAN O'GRADY: Let' see, the next case is June 11th.

CONSTANTINE ALEXANDER: June 11th. This is a case not heard.

The Chair moves -- and we have a waiver in the file, so we're all set there.

The Chair moves that this case be continued to seven p.m. on June 11th on



the condition that the petitioner modify the sign in front of her premises to note the new date -- new time and date. And with the directions to Mr. O'Grady to contact the petitioner to inquire as to why she did not show up tonight and to instruct her that there will be no further continuances absent of very compelling circumstances.

All those in favor in granting the motion to continue say "Aye".

(Show of hands).

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(7:30 P.M.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9770, 22 Tremont Street.

Is there anyone here on that petition? Please come forward. As you know, we keep a transcript, so give your name and address for the record.

GOJEB FREHYWOT: My name is Gojeb Frehywot, 22 Tremont Street. Gojeb is spelled, G-o-j-e-b. Last name is Frehywot F-r-e-h-y-w-o-t.

DAVID WHITNEY: I'm David Whitney.

49 Linden Street in Arlington. I'm an architect for Gojeb's project.

GOJEB FREHYWOT: I thank the Chair and the Board members for listening to the case. I'm here to seek relief in the form of a variance and/or Special Permit for the renovation remodeling we're doing at 22 Tremont Street.

This building was built in 1850s I think. And originally it was a single-family. And over the years it turned into a two-family house. And then when we bought it two years ago, our plan was to convert it back to it's original use which was a single family. We have a growing family of three kids and we need space. And the original configuration of the space was not conducive to our family structure. So what we would like to do is to put in dormers. And so to minimally modify the footprint and adding a porch, relocate some windows, and internally

adjust the stairway which is very steep and uneven at this point in time. And for those purposes we would like relief from you.

CONSTANTINE ALEXANDER: Okay.

Just for the record, first of all you said variance or Special Permit. It is a variance. Let's correct.

For the Board to know exactly the relief that you're seeking in terms of zoning, I know conceptually you've described it very well, what you want to do. The problem you have and why you're before us is a left side setback issue. Your house right now is too close -- it's a non-conforming structure, and it's too close to the left side, from the setback, and you'll continue to have that problem with the construction. And you now will be 2.4 feet from the side line where you're supposed to have a minimum of 17.7 feet.

GOJEB FREHYWOT: Correct.

CONSTANTINE ALEXANDER: Have you spoken to the neighbor whose property you're too close to?

GOJEB FREHYWOT: Yes. And I think that they --

CONSTANTINE ALEXANDER: We have letters in the file.

GOJEB FREHYWOT: Yes. Albie Sominez (phonetic) is the gentleman, and he is very supportive of what we're doing.

Now, in addition to the variance that I'm seeking from you, because of that distance being less than three feet, I also have petitioned the state -- because the distance between the property line and the building is less than three feet, by law since we are relocating some windows and opening some windows, we have to get permission from the state because the concern of fire jumping from one building to another needs to be --

CONSTANTINE ALEXANDER: That's a state building code issue.

GOJEB FREHYWOT: And we've done that. And had a hearing on that and a decision on that should be forthcoming.

CONSTANTINE ALEXANDER: And the question really relates, in my mind, I think your petition, your opening statement is self-explanatory, is the dormer. Are you familiar with the fact that we have dormer guidelines in Cambridge?

DAVID WHITNEY: Yes, we are.

CONSTANTINE ALEXANDER: If you're familiar with that then you obviously are not aware that the dormers you are proposing do not come close to our guidelines, and they are guidelines. What we do as a Board, I'm not sure if you are aware of it, but we do try to adhere to those guidelines. So I'd like to hear why you can't do something with the dormers

that at least come close to complying with guidelines if not complying with the guidelines.

DAVID WHITNEY: Sure, I would be glad to speak to that.

There are a couple of aspects of the guidelines which are tough or impossible for us to meet due to the existing geometry to the house. For example, the guideline that asks that the peak of the dormer's roof not spring from the ridge line of the house but further down, the ridge line isn't high enough. The ceiling is high enough for finished space inside, but the ridge line is just too low. And a roof on a dormer that didn't spring from the ridge line would just be too flat.

GOJEB FREHYWOT: If I might add to that.

DAVID WHITNEY: Sure.

GOJEB FREHYWOT: I measured the distance from the inside and it is just

above seven feet -- seven feet and one inches. The highest part is the roof on ridge line from the inside. So if we were to go, you know, one foot down, but we would be happy --

DAVID WHITNEY: There's another aspect of the guideline that, I believe the way it's worded, is they ask that the end wall, the face of the dormer be set in from the wall down below. One of the principal reasons we're doing this and seeking the relief is due to existing stairs from the second floor to the third floor. The third floor in the house that Gojeb bought is finished or it's finished long ago but it just doesn't come close to meeting the code. And we're trying to update that.

There are stairs that just barely fit are too steep. We're flattening those stairs out to meet code. It just requires that we get too close, we come up



basically to the outside edge. Which is why we've asked that the face of the wall be in line with the walls down below.

CONSTANTINE ALEXANDER: What about the size of the dormer or length? You've got approximately as I recall about 22 foot in length, and the dormer guidelines talk about no more than 15 feet. Why do you have to have -- I know you like more space. But beyond that, why do you have to have a dormer of this size?

DAVID WHITNEY: We're trying to create a master suite upstairs for Gojeb and his wife and so they can live there, and they can create bedrooms for their three children on the floor down below. The roof slopes are just as such that it's tough to get enough space up there, enough head room to make it (inaudible).

CONSTANTINE ALEXANDER: Well, enough head room or enough space for a master suite at the size that your client

would like, but can you not have a master suite that's smaller and therefore not have a bigger dormer?

DAVID WHITNEY: Yes, we could. We're seeking relief from these guidelines. Again, with the understanding of these are the hard fast rules, but we've done everything we can, you know, in short of that to try to make this aesthetically pleasing. The dormer's set quite far back from the face of the house. The dormer is very similar to this in other structures in the neighborhood, including one this board granted us a variance for several years ago.

TAD HEUER: Very similar in what respect?

DAVID WHITNEY: In that they're longer than meet the guideline and that their faces meet align with the walls down below.

TAD HEUER: And hit the ridge

line?

DAVID WHITNEY: That I can't remember.

TIM HUGHES: How long is the house?

DAVID WHITNEY: I can check. Excuse me. Actually, it's in the submission, isn't it?

TIM HUGHES: I didn't see the dimensions.

TAD HEUER: That was my concern. On the papers you sent I see almost no dimensions that are of any use to us.

DAVID WHITNEY: I apologize. Principally the dimensions I add -- that I would add are for the builder and they're working, and I'm happy to add any -- 51 feet. The house is 51 feet.

TIM HUGHES: And how far setback from the dormer from the face of the house?

DAVID WHITNEY: I apologize.

Excuse me one minute, please. Eight feet.

CONSTANTINE ALEXANDER: Other questions from members of the Board?

TAD HEUER: If you had a dormer that met the guidelines in terms of length, so 15 feet, what would that do to the master bedroom that you've designed?

DAVID WHITNEY: The master bedroom itself would just fit within the, within that length. It's the rest of the suite, the bathrooms and closets that would sacrificed. As you're looking at that plan, the dormer within the bedroom and the dormer in the width of the stairs adds up to 15 feet.

TAD HEUER: All right.

CONSTANTINE ALEXANDER: Further questions. Tad, any other questions at this point?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Is there anyone here who wishes to be heard with

regard to this petition?

CRAIG SCAPARETTA: Yes, I would like to speak.

CONSTANTINE ALEXANDER: Please come forward. Give your name and address for the --

CRAIG SCAPARETTA: Yes. My name is Craig Scarpetta. I live at 27 Tremont Street which is directly across the street from Gojeb. I've lived there for ten years. I think he's an excellent addition to the neighborhood, and I support anything he would like to do to make the house more liveable for him and his growing family. And I will say that I am probably the only person who can see both dormers. I am directly across the street, and I say I support the design completely. I think he's not only an excellent addition to our neighborhood but I think to the whole community at large. I

support this.

CONSTANTINE ALEXANDER: Thank you, sir.

There are letters in the file that I would like to read into the record at this point.

There is a form letter that was signed by Anthony Alberti of 231 Norfolk Street. Leslie Cohen and 237 Norfolk Street, Nancy B. Young at 18 and a half Tremont Street. And the rest is duplicates.

All of these letters say that I, and the name of the person, am an immediate abutting neighbor of the 22 Tremont Street property. I've had a chance to review the proposed plans to revert the house on 22 Tremont Street from the existing two-family into a single-family home. I am supportive of the plan. And then separately there is a letter, a different form of letter from Nannette and Albe,

A-l-b-e Simenas S-i-m-e-n-a-s who live at 24 Tremont Street. "We are writing in support of the variance for the construction at 22 Tremont Street to begin this spring, 2009. As abutters to the property, we have been shown the plans and understand the extent of the construction. In particular, we confirm that the new windows proposed for the third floor, although near our property line, are more than 12 feet from our dwelling. We believe that this addition will have no adverse effect on the quality of life or the values of property in this neighborhood. Feel free to contact us with any questions you might have."

And that's it in terms of correspondence.

Comments from members of the Board?  
Doug? Any comments?

DOUGLAS MYERS: No, no, I think I'll just listen some more. Thank you.

CONSTANTINE ALEXANDER: Tim?

TIM HUGHES: Well, I've never been a big fan of the guidelines, especially where it comes to building out to the side walls because I think structurally it's an easier thing to do for builders. It's cheaper for the homeowner in the long run. And aesthetically it doesn't bother me at all. The ridge line thing can be a problem, but in a case where you're only getting 7,1 now with a ridge line. I don't see a geometric way to get around it. And the 21 foot dormer in a house that's 51 feet long doesn't seem out of proportion to me either. So in the case where you've contravened three of the dormer guidelines, I can see the reasons for all three.

CONSTANTINE ALEXANDER: Tad?

TAD HEUER: Nothing right now.

CONSTANTINE ALEXANDER: Okay.

Brendan, do you have any comments



you'd like to make right now?

BRENDAN SULLIVAN: Is it the stairway that goes to the third floor which is somewhat of the tail is wagging the dog here in a sense because it's hard to build around with the dormer guidelines. In other words, that staircase, it's a new staircase which is replacing an existing one.

DAVID WHITNEY: Right.

BRENDAN SULLIVAN: The existing one is quite deficient as far as functionality and code obviously.

DAVID WHITNEY: Right.

BRENDAN SULLIVAN: So in order to build a code compliant, somewhat code compliant staircase, that sort of cuts right in the middle of the dormer.

DAVID WHITNEY: Yes.

BRENDAN SULLIVAN: And if that were at one end of a dormer and you push the dormers, say, to the side here, that

really doesn't do it because of the configuration of the house itself, I think; is that right? I mean, I think that because problematical?

DAVID WHITNEY: Right.

BRENDAN SULLIVAN: So it's really the --

DAVID WHITNEY: That's the circulation around those stairs once you get up there. That's an issue.

BRENDAN SULLIVAN: So it's the stairs that requires almost that you go on either side of it rather than all to one side with a 15 foot?

DAVID WHITNEY: Yeah.

BRENDAN SULLIVAN: I mean, this is my reading of the thing anyhow. Otherwise it becomes a design and a circulation problem other than that. So, whatever it is.

CONSTANTINE ALEXANDER: Well, I'll offer my two cents. I must say clearly

I'm in support of what you want to do. I think it's exactly the kind of project we want to support in the city, but I am very troubled by the fact that you're so far out of compliance with the dormer guidelines. I have no problem with the ridge line issue or facing issue. If you needed all 22 square feet for your children's bedrooms, it might be moved. But here, I mean we're talking about -- we have dormer cases all the time. And to allow you to have 20 feet -- 22 foot dormer so you can have a large master bedroom suite, although I certainly am sympathetic with it, I have a little bit of a problem with respect to the Zoning By-Law. I would have liked to see a dormer that's not as long. I can see it going to the ridge line. You made a good case for that in going to the front to the face of the house. But I wonder whether you -- and that would be my view, I'd love

to see a smaller dormer in terms of size just as an effort to come closer to what the City of Cambridge desires with dormers. That's just my point of view.

BRENDAN SULLIVAN: I think you're probably on to something. That from where we sit, we would like to see -- this is a dormer in compliant and this is why it doesn't work. As opposed to this is what we need to have, you know. We've done the exercise, and this is the bottom line, but yet we need to be convinced that exercise is -- I'm not saying it's not valid, I think it's just -- I think maybe that's what you're leading to.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: What is the height of the building right now?

CONSTANTINE ALEXANDER: 29.5 feet.

DAVID WHITNEY: 29.5 feet.

BRENDAN SULLIVAN: And then of 35 foot?

DAVID WHITNEY: Yeah, 35 foot.

BRENDAN SULLIVAN: If it becomes prohibitive to race the ridge line to --

DAVID WHITNEY: It would be prohibitively expensive. It would require much more demolition than otherwise would be needed prior.

BRENDAN SULLIVAN: I'm just saying it sort of gives it a little bit better shape to the dormers.

DAVID WHITNEY: Although a very different look to the rest of the house and to the main facade facing the street. If the gable then becomes steeper. I think you put it well before when you explained that having the dormer -- having the stairs -- moving the dormers so that the stairs met with one end of the dormer, becomes problematic, because then there's no way to get to the spacing on the other side of the stairs. There will be a bedroom on the third floor. Whenever you

have a bedroom on the third floor, I feel safest when you can provide a bathroom up there as well, rather than having people going up and down the stairs during the night. And with the dormer ending with the stairs, there would be no way to get the bathroom in there as all.

CONSTANTINE ALEXANDER: You're saying that you need the 22-foot dormer given the issue with the stairs to have a bedroom and a bath on that floor?

DAVID WHITNEY: Yes.

CONSTANTINE ALEXANDER: Anything less than 22 feet, you cannot have a bath in your professional opinion?

DAVID WHITNEY: Or it would be limited to 15 feet. It would be difficult or impossible.

TAD HEUER: Shower.

CONSTANTINE ALEXANDER: I don't mean to quibble, but how about the 17 and a half foot dormer? I mean, something

again that comes close. It's not all or nothing in my mind. But I, you know, we are willing, or at least I'm willing to waive some other aspects of the dormer guidelines.

DAVID WHITNEY: If I could be so bold, maybe 19 feet would be -- would include the space and that would be just enough room to get around. That would leave the dormer in the bedroom as it is and room to move to the other side.

CONSTANTINE ALEXANDER: So you think you need at least 19 feet to get what you want to do?

DAVID WHITNEY: Yes. That would allow for -- not a luxury suite but a complete suite up there.

TAD HEUER: Or 18 and a half?

CONSTANTINE ALEXANDER: Or 18.

DAVID WHITNEY: I'm thinking the 15 feet plus three feet of hallway and wall thickness. I'm not trying to nickle

and dime it -- just practical concerns.

CONSTANTINE ALEXANDER: Further comments?

DOUGLAS MYERS: I agree with Gus's comments about that. I think that -- and especially where it's feasible to make some further efforts to come closer, and it's clear that both sides are willing to discuss the same range with what constitutes those coming reasonably closer. That's certainly a resolution that I would like to see.

TAD HEUER: To follow up on Tim's question on the length of the building, what's the length of the building without the -- so if I'm looking at this photograph here in the file --

DAVID WHITNEY: Sure.

TAD HEUER: -- what's the length from the front corner to the match that two window length?

DAVID WHITNEY: Just a second,



please. The length is just about 32 feet.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Brendan, any further comments?

BRENDAN SULLIVAN: No, but I think that what Doug is suggesting is another -- is that right to --

CONSTANTINE ALEXANDER: I think that's -- I think where we're going, if we don't want to vote up on this petition as is, is some sort of continuance to allow them to revise the plans to showing us a smaller dormer.

BRENDAN SULLIVAN: Yes. At least it's credence and gives and breathes some life into it, if you will. I think some of the dimensions will be helpful, too. But anyhow, that's my....

CONSTANTINE ALEXANDER: I can tell you, you need four votes to get the variance you want. I am not -- I would not vote in favor of the plans as given to

us. I told you what I would vote in favor of.

DAVID WHITNEY: I understand.

CONSTANTINE ALEXANDER: I think I hear from Doug that he would feel the same way. That's two votes you're not going to get. So it strikes me, what makes more sense from your point of view, is to continue the case to a time when all five of us -- it has to be the same five people, could be here. And before then you submitted revised plans showing a smaller or different design dormer, certainly smaller.

DAVID WHITNEY: If I may, and this may not be possible, in the interest of time, would it be possible for the Board to vote on it -- vote on these drawings with a 19-foot dormer rather than waiting and go through the round of the continuance.

CONSTANTINE ALEXANDER: Our

dilemma is that when we -- we have this issue often. Is that we like to approve -- give relief tied to specific plans so there's no questions later on with the building department so that what you're doing is what the Board approved. What you could do, I don't know if it's at all feasible, we could continue this case, push it to a couple hours from now. If you want to go into one of the other rooms, take these plans and redesign the dormer and come back with something you have to live with, we could do that. Or the other alternative is another night. It's your call on that.

DAVID WHITNEY: I'm willing to give it a shot if you are.

GOJEB FREHYWOT: Okay.

CONSTANTINE ALEXANDER: Certainly, if you can't get it done in time when we're all done with the rest of our cases we can continue.

TAD HEUER: You also realize the five member requirement, most of us are here every week. It wouldn't push it off extensively. It would just be the next time we have an opening for continuing the case.

CONSTANTINE ALEXANDER: It would probably be June 11th.

DOUGLAS MYERS: June 11th would be fine for me.

TIM HUGHES: It's not any of us are going to prison or anything.

DOUGLAS MYERS: You never know what sort of things might come up.

CONSTANTINE ALEXANDER: Would you like some time to redraw the plans?

GOJEB FREHYWOT: We'll do that.

CONSTANTINE ALEXANDER: We're going to adjourn this case until after the rest of our regularly scheduled cases and we'll see where we go from there.

DAVID WHITNEY: All right. Thank

you very much.

(Whereupon, a discussion was  
held off the record.)

(7:50)

(Sitting members: Constantine Alexander,  
Tim Hughes, Brendan Sullivan, Tad Heuer,  
Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair  
will call case No. 9771, Nine Sibley

Court.

Is there anyone here who wishes to be heard on that matter?

MALE AUDIENCE ATTENDEE: Yes.

CONSTANTINE ALEXANDER: While people are coming forward, please state your name and address for the record.

ADAM SEITCHIK: Yes, Adam Seitchik. I'm the owner of Nine Sibley Court.

SALLY DEGAN: Sally Degan, the architect. D-e-g-a-n.

CONSTANTINE ALEXANDER: Before we get into the exact merits of the case, and if anyone wishes to speak by the way, you'll have an opportunity to speak at the appropriate time. Again, you'll have to give your name and address for the purposes of the transcript.

The advertisement indicates that you are looking for two types of relief; a variance and a Special Permit. The

variance to construct an addition to your single-family home and other related items, and a Special Permit was to locate a parking space within a front yard setback. Now I understand with regard to that Special Permit, I think there are some issues as to whether that is the right relief that should be sought.

ADAM SEITCHIK: Correct.

CONSTANTINE ALEXANDER: As I read this, here comes your attorney now -- well, I'll wait while Mr. Rafferty gets here.

(Whereupon, a discussion was held off the record.)

ATTORNEY JAMES RAFFERTY: I apologize. James Rafferty on behalf of the applicant. Seated to my left Adam Seitchik. And to his left --

CONSTANTINE ALEXANDER: They've identified themselves. We're all set.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: I was starting to say, Mr. Rafferty, when you arrived, I just wanted to get the procedural aspects of the case out front right away. It shows two types of relief as being advertised, as you know, a variance and a Special Permit and there seems to be some question, at least in my mind, whether a Special Permit is at all appropriate. It's a front yard setback, it's not a matter of a Special Permit. The relief that needs to be granted it would be a variance, if it's granted at all. Am I right or wrong, do you disagree with that?

ATTORNEY JAMES RAFFERTY: Well, you're right. Because the relief related to the parking in the front yard cannot be done by Special Permit.

CONSTANTINE ALEXANDER: That's my opinion.

ATTORNEY JAMES RAFFERTY: When the



application was submitted, it indicates relief sought for a variance and for Special Permit. The Special Permit is for the relocation of doors and windows on non-conforming walls. Regrettably that -- when the notice was prepared for publication, it appeared that the Special Permit was assigned to the -- in the characterization or the text of the notice, the Special Permit was assigned to an area which doesn't apply to the Special Permit. So I have had some discussions with the office for the last week or two, and they're mindful of a potential defect of that. And I believe it's probably a question -- a debatable question as to whether the adequacy of the notice is sufficient. But I do think there's very much a cloud on the notice. We -- my client has been at this for a while. Our hope would be that we could proceed with the portion of the application that has

been properly advertised, the variance with regard to the addition to the house. And if the Board were to direct us to re-file or to have it re-advertised, I imagine the Board could make a finding in the context of this case that the parking relief wasn't properly before it because of the problem with the notice and not make an adverse finding on it, but simply determine that we needed to come back with a separate application.

CONSTANTINE ALEXANDER: Well, speaking for myself, I agree with your analysis. I don't think we can properly take up the parking in the front yard issue tonight because it wasn't properly advertised, regrettably as you point out. Certainly we should not make (inaudible). I think this is for another day, and in my view subject to the views of my fellow Board members that we redirect you to re-advertise this portion of the case.

And so we consider that at another time and another night, but we go forward tonight with the other part of the petition which is the addition and the relocation of windows and such.

Other members of the Board feel differently?

DOUGLAS MYERS: I would agree with that.

CONSTANTINE ALEXANDER: Okay. Why don't we get that out of the way then. I suppose we should take a motion on that.

SEAN O'GRADY: Please.

TAD HEUER: I do have one question.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: Given that the advertisement had been reversed and the windows are now within the variance advertisement, where they should have been Special Permit, I assume we're proceeding on the variance under the presumption of

the Special Permit nature of the window relief is lesser and to the defense of the variance.

CONSTANTINE ALEXANDER: We had this issue not too long ago.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: I would be prepared to go forward with the window relocation case.

Are you going to ask for a Special Permit for that or are you going to lump it into your variance?

ATTORNEY JAMES RAFFERTY: No. My intention was in the supporting statement that was filed and in expectation that we would proceed that way, I think it's, it's a case of, as you noted a lessor good, I think if something is characterized as a variance that can be done by Special Permit, the fact that it's all -- the application reflect a Special Permit, it's there, I don't find that to be

problematic. I do think that relief that requires a variance that's advertised as requiring a Special Permit, presents a different scenario and it would preclude it from the Board from acting on it.

CONSTANTINE ALEXANDER: I agree with that analysis. I think from the Board's position historically as well.

So, I would move that the matter of the locating the parking space within the front yard setback, that that matter not be decided adversely or positively this evening. Rather that because of an incorrect advertisement that this matter be re-advertised to show, as I gather with the relief you would need is a variance to put your parking in the front yard. And that case would be heard at a later time. That part of the case. And we will proceed tonight simply with the rest of the case, which is the addition and the relocation of the windows.

All those in favor of the motion is so moved, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

CONSTANTINE ALEXANDER: And those who are interested in the case, we are not going to talk about parking in the front yard tonight. So that's for another night.

Okay, Mr. Rafferty, proceed.

DOUGLAS MYERS: What is the effect of the motion we just granted with regard to the composition of the panel at such time?

CONSTANTINE ALEXANDER: It's going to be re-advertised. It's going to be like a case not heard.

ATTORNEY JAMES RAFFERTY: I assume we would be assigned a new BZA case

number?

SEAN O'GRADY: Totally new case.

ATTORNEY JAMES RAFFERTY: Thank you again, Mr. Chairman and members of the Board. This is an application that seeks to construct essentially two additions to a house in the Marsh Crown District or the Lower Marsh District as it's known. Sibley Court is a private way that Board members may not be all that familiar with, perhaps they received a notice of this case. It's like many little courts and private ways in this stretch of the marsh. It is dominated by houses of a certain scale, in size and relative close proximity to one another. And in this case, the applicant, because they had the experience of working with the Conservation District Commission for several months, and neighbors, actually made a model that's quite helpful, something we don't typically see in this

form, for understanding both the existing conditions and the context in which the house is located. The house sits at the end of Sibley Court. And to begin with, it then, when one begins an analysis for zoning purposes of what are the relevant setbacks, the house sits sideways on the lot. But the front setback of the house is that as you know, is in relationship of -- it's the lot's relationship to the way, not the house's siting on the lot. In this scenario, the front setback is the area between Sibley Court and the front face of the house.

CONSTANTINE ALEXANDER: I'm sorry, do it again. I was distracted. Repeat that, please.

ATTORNEY JAMES RAFFERTY: This zone right in here (indicating) is the front setback and extends the entire length of the property. This becomes the front set (indicating). This is the front



setback (indicating). This is the rear setback (indicating), and these are the two side setbacks.

So to begin with, the issue of the relief then that's being sought tonight is a -- for the structure is really setback relief.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And it's rear setback relief. Because what's being proposed here, in this lot, the rear set lot, if you combine the rear setback requirement and the front setback requirement, you don't have any room left to build anything. It's a very -- it's a small lot. It's narrow, but it does have some length. In contrast to some of the other properties around it, you can see, though, it does have a significant amount of open space by comparison. Percentage-wise it exceeds what's required in the district and there's no relief

being sought around the open space.

CONSTANTINE ALEXANDER: Or FAR for that matter.

ATTORNEY JAMES RAFFERTY: That's quite correct.

In fact -- and we have -- I have the FAR calculations here. Because that's also an interesting aspect of the case. Because I'm sure that the Board is familiar with provisions of Article 8.22 H1, one is able in certain cases, and I have a copy of it, one is able to do a dormer or second story addition to a single-family house provided they don't increase the GFA beyond that which is allowed under the FAR requirements; notwithstanding the fact that they might not be conforming setbacks.

So for what's being proposed here, there are two elements. In the application this week I was able to file a plan that you might find helpful. It

actually wrote down the portion of the addition that is subject to that provision, which means essentially that it is not the subject of the variance. The variance is necessitated because the two-story addition on the right side of the house violates the rear yard setback.

TAD HEUER: On the left side?

ATTORNEY JAMES RAFFERTY: Excuse me, the left side as you face it. The left side of the house violates the rear setback. So if you look at the site plan, or in the model, what's proposed by way of the variance is setback relief to allow the established rear setback line to remain in place and continue into this area right here (indicating).

CONSTANTINE ALEXANDER: To be specific about the setback, as I read your dimensional form, you're supposed to have 25 feet under the Zoning law, rear yard setback. And you now are 8.2 feet from

the lot line, and you're going to 8.0 feet to the lot line. You're moving two tenths of a feet closer to the lot line.

ADAM SEITCHIK: What we're doing, the house is not parallel to the lot line.

CONSTANTINE ALEXANDER: Right.

ADAM SEITCHIK: So we're extending the house along its current line, and then actually slightly gets the -- the addition then will get slightly closer to the back line.

CONSTANTINE ALEXANDER: So I'm sorry, the point being simply you're very slightly varying the distance of the rear lot line which is what it is right now?

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: It's a more massive structure --

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: -- if you will, but that's all it is.

ATTORNEY JAMES RAFFERTY: And the change, and the change is only -- and the reason there's even a change between the existing condition is in order to have the wall be straight, the lot line and the wall are not completely parallel, there's that slight variation. So the -- but for that two tenths change, this addition, this addition is intended to continue on the rear plane of the house. Pick up that plane and extend it into this area here (indicating), and it's a two-story addition. And as the Chair noted, the square footage here, the lot today only has FAR of .29 with 1129 square feet. And it's proposed to go to an FAR of .44.

Now, I asked the applicant if he would provide me with a breakdown of GFA in terms of what's proposed. And I can offer this for the Board.

CONSTANTINE ALEXANDER: Is this in the dimensional form now?

ATTORNEY JAMES RAFFERTY: It is, but it's a further breakdown. Because the dimensional form, as you know, asks for existing conditions and proposed. But --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- between existing and proposed, a portion of that GFA is allowed as of right pursuant to the Article 8 exception. So, the amount -- the current GFA of 1129 is going to be increased by 575 square feet. Okay? Of the 575 square feet, let me make sure I read this correctly, that number represents -- 344 square feet of that amount are contained in this two-story element.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: 231 square feet are contained over here (indicating). That's not subject to the variance.

TAD HEUER: Just for the record,

this and there, the 344 is in the new addition or the as of right addition?

ATTORNEY JAMES RAFFERTY: The new addition.

So of the 575 square feet reflected in the dimensional form as increased GFA, 231 square feet of that additional GFA is contained in a second floor addition that is not the subject of the variance because of the language of the Article 8. So that means that a two -- there's two-story element, totalling 344 square feet is what -- is the subject of the variance. That -- so the change, the change in the FAR still remains below the .5 and the open space requirements remain in excess of what's required in the B District.

CONSTANTINE ALEXANDER: I just want us to stop right there, Mr. Rafferty, and repeat it for benefit of the neighbors, because this is obviously great interest in the case.

And I want you to understand why it is they're seeking the relief and the nature of the relief. The relief for the most part is unnecessary. They could do a lot of what they want to do without having get any approval from the Zoning Board. Just this rear yard setback issue from -- one of the second-story additions that creates a slight, but not inconsequential zoning problem. Just so you understand this. It's not that the opposition is too big -- too much structure for the side. In fact, it's not from the Zoning point of view. It's common aesthetics. But from a Zoning point of view it's within the FAR which means it's not overly dense in terms of the use of the lands. Just so you understand that.

ATTORNEY JAMES RAFFERTY: Right.

In model form it might be helpful to point out exactly what's happening here. This represents this piece to the right



(indicating) represents the two-story element --

CONSTANTINE ALEXANDER: If you want to come forward and look, feel free.

ATTORNEY JAMES RAFFERTY: -- a two-story element that violates the rear setback and thus necessitates the request for the variance. This piece right here (indicating).

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: That 344 square feet.

On this side of the existing gable is a two-story addition modeled here actually without representing a reduction in some space here (indicating. This element is actually lowered. But there's a two-story element that added here (indicating). That space is 244 -- 231 square feet is not the subject of the variance because of the provisions of Article 8. So this is present, and again,

the hardship has everything to do with the size of the lot. It's narrow. The abutting property in the rear is -- has not come anywhere near 25-foot setback either. It's an institutional style building, well-designed, well-maintained graduate student housing. But it is a rather unrelenting long wall. So the -- this property is challenged somewhat by that (indicating). But nonetheless, it's able to achieve a greater setbacks both in terms of the side yard setbacks and the front setbacks than most of the surrounding properties.

We have been before the Neighborhood Conservation District Commission, had a few meetings there. They issued a Certificate of Appropriateness for the project. There is correspondence in the file from abutters in this property who are in support. And there have been other expressions of support given to the

petitioner by I believe property owners here (indicating). That essentially is the case. The architect's here. We can go through the design elements if you wish.

CONSTANTINE ALEXANDER: The Certificate of Appropriateness that you did achieve, just to make reference to the specific plans, are those the same plans that we have before us tonight?

SALLY DEGAN: No. The design is the same. We however providing them in a different format for this hearing tonight.

CONSTANTINE ALEXANDER: Well, format's one thing. But substantively are they different?

SALLY DEGAN: Identical.

ADAM SEITCHIK: There is one difference that came up that we discussed with the Marsh Half Ground District which was material, which is there's a door -- there's a door on this side (indicating),

that's the marsh half ground was a window. And we brought that to the Marsh Half Ground District, and they said because this cannot be seen from a public way, it was not material. And I think they wrote something to that effect. So there was one minor change in the plan otherwise they're identical.

CONSTANTINE ALEXANDER: Otherwise the plans we see tonight, these are the plans that are identical to what the Conservation District saw?

ADAM SEITCHIK: Yes.

CONSTANTINE ALEXANDER: Questions from members of the Board? Brendan?

BRENDAN SULLIVAN: We put the proposed into this place there?

ATTORNEY JAMES RAFFERTY: (Moving model houses on diagram.)

CONSTANTINE ALEXANDER: Can you see that?

BRENDAN SULLIVAN: Yes. I'm just

trying to get a perspective that's all.

ATTORNEY JAMES RAFFERTY: To that point, Mr. Sullivan, there was a considerable amount of discussion. Candidly there was an earlier iteration of the plan that represented more massing in this area, and there was comment about view lines and the viewing from Spark Street. So that, that the earlier plan actually had that extending further and had a garage in that area (indicating). The comments from the abutters and Commission members led to a rethinking of the massing and a reduced form that you see here.

CONSTANTINE ALEXANDER: Members of the Board have any questions? You're all done?

BRENDAN SULLIVAN: Yes, I'm all set.

CONSTANTINE ALEXANDER: Tad?

TIM HUGHES: No questions.

DOUGLAS MYERS: No questions.

CONSTANTINE ALEXANDER: I'll throw this open to public testimony. First, I would like to hear from anyone who wishes to speak in favor of relief being sought. Anyone here wishes to be speak in favor?

No one has so indicate -- oh, sir?

MICHAEL McCORMACK: My name is --

CONSTANTINE ALEXANDER: Come a little closer, sir.

MICHAEL McCORMACK: -- Michael and Magdala McCormack. We are the abutters at 10 Sibley Court, I believe, yes, that house (indicating). I believe we will share the most space with the proposed form of the house as we do at the present state of the house. We have been residents for 18 years at Sibley Court and have watched the garage wall and then more rapid deterioration of the house and the property under the previous owner, and then after his death with subsequent

litigation. We were the ones that spotted the fire that started there. And the Cambridge Fire Department came and put it out before it spread to the other houses. Adam and Pam Seitchik have proposed their plans to us from the beginning. We realize that given the location of the house and the very constricted nature of Sibley Court that we probably are the individuals that will be most inconvenienced by any construction that takes place there, including this. And we have to say that we have been impressed with the extent to which the Seitchiks have sought to -- our opinion and that of the neighbors that they were aware of immediately around the house, and the extent to which they have reshaped the plan for their home to accommodate some of the serious and thoughtful objections raised by many of the abutters. And that said, we hope that they will -- given that

they have engaged in this process now for a very long time, and a time of great financial difficulty for I think for probably everyone in this city and this country, we hope that the Board will be able to find favorably and allow this to proceed.

CONSTANTINE ALEXANDER: Thank you.

Anyone else who wishes to speak in favor?

LAURIE DOYLE: Yes. I'm Laurie Doyle. I'm at 98 and a half Foster. And I just want to express my hope that it gets approved. The property is really quite unsightly now and doesn't seem to be anywhere else to go unless somebody does something.

CONSTANTINE ALEXANDER: Thank you.

Anyone wish to speak in opposition or to raise some more questions about the proposed project?

(No response.)



CONSTANTINE ALEXANDER: The Chair notes none.

NANCY NORDMAN: Excuse me, I just assumed there were other people. I was waiting for everyone else to go.

CONSTANTINE ALEXANDER: Go ahead, now is your time. Your name and address for the record.

NANCY NORDMAN: My name is Nancy Nordman N-o-r-d-m-a-n, 23 Sibley Court. And I'm the direct abutter up to Nine Sibley Court and I share the whole length of the other side of the court with Sibley Court property. This is my daughter Eila. My daughter and I occupy the house at 23 Sibley Court. It's my -- what I call last nesting place, and this is the place where I plan to live out my remaining years. Excuse me if I speak from these notes, but there are so many points that I want -- I'd rather not occupy you with random thoughts.

CONSTANTINE ALEXANDER: No need to apologize. Do what you have to do.

NANCY NORDMAN: Thank you.

I love my house. It's peaceful and serene at the end of a private court. Traffic is minimal and slow. People must back out once they have driven in. And I thought it would engage parking, so I said besides parking the Court is used for recreation and socializing. Children play games and with pets and people sit in the sun.

And would you show the picture?

We have pictures. This is my house on the side of Nine Sibley Court (indicating). And the pictures in the application, that side of the court is not shown. So I wanted to -- the house would be at that far end, their house.

CONSTANTINE ALEXANDER: This picture is this side of the house?

NANCY NORDMAN: Correct, correct.

I'll show you a few more pictures of that, too. This is a picture where you can sort of see the McCormack's house and my neighbors to the right. And as you can see, I'm kind of hemmed in there with the exception of the open space on the side of Nine Sibley Court. This is a picture of my property line (indicating). And as you can see, I'm in the unfortunate situation of being right on the property line with Nine Sibley Court.

CONSTANTINE ALEXANDER: Yes, you are.

NANCY NORDMAN: I was told by numerous villagers and attorneys that the open space on Nine Sibley Court was unbuildable beyond the footprint. When Nine Sibley Court was shown for sale, perspective buyers, including the petitioners, were told that the property was unbuildable and that parking on the court had to be worked out with the

neighbors.

Should I speak louder?

CONSTANTINE ALEXANDER: I can hear you all right.

NANCY NORDMAN: Okay.

Their planned addition, relocation of windows and doors and parking crests all profoundly affect the peace and tranquility and quality of life I enjoy.

CONSTANTINE ALEXANDER: Again, you understand parking is not before us tonight?

NANCY NORDMAN: Thank you. I will -- that is in a separate part, so hopefully there are no more references because I'm moving to variance now.

The owners have asked for a variance based on a hardship. There is no hardship. The property is regularly shaped with a house on it which has enough square feet that it can be remodeled to exceed the allowable FAR.

You want to show the basement plan?

Modern technology makes it a lot easier.

CONSTANTINE ALEXANDER: What is this handout?

NANCY NORDMAN: This is the basement plan.

CONSTANTINE ALEXANDER: Of the plans we have before us?

NANCY NORDMAN: Well, that was never shown to the Historical Commission. This is any of us have ever seen it.

CONSTANTINE ALEXANDER: Where did you get it from?

NANCY NORDMAN: I asked for it from Mr. Seitchik and he wouldn't provide it to me. Although the Zoning Board -- Inspectional told me that the petitioner would give it to me, they wouldn't let me copy it, but another neighbor was able to get it.

CONSTANTINE ALEXANDER: This is

the same that's in the plans as we have here?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Okay.

NANCY NORDMAN: But that, the basement plan was not on the part that the Historical Commission was shown.

CONSTANTINE ALEXANDER: All right. Okay.

NANCY NORDMAN: Their plan --

ATTORNEY JAMES RAFFERTY: They don't have purview over the interior of the house. We don't show --

CONSTANTINE ALEXANDER: The point being that's why it wasn't shown to the Historical Commission. It's not relevant to them. Okay.

NANCY NORDMAN: Although it would have been meaningful in the kinds of discussions that took place. I acknowledge what you say.

Their plan is to finish the existing

basement and add a finished basement under the addition. There's a landscape plan that labels the basement as a lower level. The architect's plan shows this space with a ceiling height if you look at it of six foot, eleven inches, and all the rooms are labelled as storage. The storage areas are laid out as would-be bedrooms and a family room. There's a hall when you come down the stairs with three rooms opening off of it. The larger room, which goes off to the rear of the building, has sliding glass doors which open on to a lower terrace which is attached to an upper terrace that we were shown in the landscape plan. Additionally, there is an area in the mechanical room that is directly beneath the full bath on the floor above. You see it? And an area in the family room, over in that larger room, that is directly beneath the powder room above. Two bathrooms and a bathroom and a

wet -- or a bathroom and a wet bar can easily be added to the level. And I think we can anticipate that it will be. It is not uncommon to plumb in connections and cover them up to the open and fixtures installed after a final inspection or later.

CONSTANTINE ALEXANDER: Can I just stop you right here? And not to be argumentative, but I want to more educate you to this.

By having the basement at six feet, eleven that space does not count for the FAR.

NANCY NORDMAN: Okay.

CONSTANTINE ALEXANDER: So, they have represented to us that their project is going to comply with the FAR requirements, which is a significant compliance. I think what you're suggesting is that they are going to go over the FAR and they've maneuvered a



little bit by making the basement six feet, eleven inches and therefore, if you will, jury rigged the FAR calculation. I'm not saying that they've done that. I don't think you're suggesting that. I'm not going to suggest it. But I would point out that if we did give approval tonight, and they did do what you're suggesting, making this into a living quarters, that would be a violation of the building laws and the Zoning laws and that would be a subject of a separate enforcement proceeding. It's not like if we grant relief tonight, they're off to do whatever they want with this basement area.

NANCY NORDMAN: I agree.

CONSTANTINE ALEXANDER: Okay.

NANCY NORDMAN: Appreciate that. And I did not know that. The plan for this -- although I also make a different argument using this kind of an

understanding. The plan for this house is to dig the basement down three or four feet, so without changing the existing height of the building, the ceiling heights on the two upper levels can be adjusted higher. Lowering the basement an additional foot would permit making the lower level a liveable space as defined by ordinance. So this developing liveable space within the existing footprint following this plan would create 2,345 square feet. The ordinance requirement is a maximum of 1,933 square feet. The ratio of gross floor area to lot area would then be 61 percent. The ordinance maximum is 50 percent. Just rehab it within the existing footprint exceeds the FAR.

Is that -- what I'm suggesting is, you can rehab along the lines of the very plans they presented by digging down a little bit farther.

CONSTANTINE ALEXANDER: If they

dig down a little bit farther and they get the basement from seven feet or higher --

NANCY NORDMAN: Right. They only need one inch.

CONSTANTINE ALEXANDER: Well, then they have violated the Zoning By-Law.

NANCY NORDMAN: Well, what I'm suggesting is that because I was told that the house shouldn't exceed the footprint, that there's no hardship associated with building within the footprint. You can exceed the FAR, just by -- you can exceed the FAR without any additions is what I'm saying.

So, this addition they're proposing in the front would violate the setback so they need relief for it. They're also going to pour a complete finished basement under that with one inch, that's one of the rooms. One inch lower ceilings. If the addition proposed had one inch of additional ceiling height of the lower

level, the square footage of the house would be 2,683 square feet for an FAR of 69.4 percent. From my perspective this for all practical purposes is the house -- the size of the house they've proposed minus one inch in the basement. In addition to being no legal hardship for the variance, there is no hardship with regard to the allowable size space that can be created within the existing height of the building and footprint. So, from my perspective, I guess I've gotten it backwards, but that's because it's in place of the parking. I'm objecting to the addition. It impinges -- intrudes into the space that in which my house shares.

Can you show --

ATTORNEY JAMES RAFFERTY: Your house shares?

NANCY NORDMAN: No. Meaning the property line. My house is -- meaning

the --

CONSTANTINE ALEXANDER: I think she means it gets closer to her lot line and her house. It intrudes in that --

NANCY NORDMAN: It intrudes in the space near my house.

ATTORNEY JAMES RAFFERTY: The point being that the 15 feet setback is complied with. The addition is no closer to this woman's house than what the zoning allows.

CONSTANTINE ALEXANDER: I understand that.

ATTORNEY JAMES RAFFERTY: I apologize.

NANCY NORDMAN: Oh, but it comes -- is this the right one? Oh, it's going to come out -- I'm sorry. It's going to come out like this (indicating). So in other words --

CONSTANTINE ALEXANDER: But the point is is that the only person whose

space is being intruded upon by virtue of this addition is that graduate dormitory behind.

NANCY NORDMAN: You mean the setback?

CONSTANTINE ALEXANDER: Yes. This addition --

NANCY NORDMAN: Oh, oh.

CONSTANTINE ALEXANDER: -- if built as proposed --

NANCY NORDMAN: I see.

CONSTANTINE NORDMAN: Would be legally compliant vis-a-vis your property in terms of setbacks.

NANCY NORDMAN: Oh, in terms of setbacks. Well, I'm talking then about in terms of liveability. I'm sorry. Keep this a minute, I want to show you something.

So, I spoke about the movement -- oh, I said you were going to move some windows and doors and all. So what

they're proposing to do is move a door, the front door that's way down here (indicating), far away from me, up here to this end which will be close to -- as you can see this window and my other side windows (indicating). And what -- this and the addition, because the addition's going to come out here (indicating). And on this end it's going to have -- I think because of the parking -- I don't want to be any longer. If you'll excuse me one minute. Because I put the parking in there because it's part of it.

So I'm concerned about the moving, the door down here (indicating). It shows up as a glass door. And I'm concerned that when they build the structure out here on the end, they're going to have three French doors on the first floor where the living room is, and they're going to have a door upstairs in the master bedroom. So these are my points.

The movement of the front door to be near to my building on the proposed addition to bring their house nearer to mine, will have us sharing our lives. The front door's glass and the addition has three glass French doors, and the window in the master bedroom above. Without the addition, I cannot see into their house and they cannot see into mine. In their plan we will share living rooms and bedrooms. The intrusion of the addition in the open space will bring the commotion of their daily life into my life. I oppose both the variance request for the addition and the Special Permit to move the front door.

I don't -- I'm going to skip over the parking part. They submitted a landscaping plan with this. And although it's not strictly part of the variance, I have been told that I can describe the effect on me in case should you grant this



a variance, some conditions might be included. And the landscaping plan is a source of concern.

CONSTANTINE ALEXANDER: Is this the plan you're referring to?

NANCY NORDMAN: Yes. May I see it because I think it's different? Yes, thank you very much.

The plan that you have in your hand, that is the one that is submitted, is not the one approved by the Crown Marsh Historical District. We have a copy of it here.

CONSTANTINE ALEXANDER: Does the district has jurisdiction over landscaping?

NANCY NORDMAN: Excuse me?

CONSTANTINE ALEXANDER: Does the district commission have jurisdiction over landscaping?

NANCY NORDMAN: Yes, it was determined --

ATTORNEY JAMES RAFFERTY: They did in this case.

NANCY NORDMAN: They did. In terms of the basement wall and the way the land is impacted.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: And just for the record, I apologize for interrupting you, but I'm sure you will agree, there was a separate hearing on the landscaping plan because at the time the original submittal we weren't prepared to talk about landscaping. There was a separate proceeding and that also was granted a Certificate of Appropriateness. A copy of that is in the file as well.

NANCY NORDMAN: And it is actually when they got the landscaping plan, that we saw that they had changed the back to show a lower level, and that a door and so forth. And that's how it was determined then that that was going to occur. That

was not in the plan that was approved.

At any rate, because in this one they have changed the wording a bit and they -- and they didn't include one height of a gate and the shrubbery out here (indicating). So, I don't know what happens when you put an unapproved plan in the application.

CONSTANTINE ALEXANDER: I'm lost. Why was it unapproved? I thought this plan was approved.

NANCY NORDMAN: No, what I just said is the plan you have is not the one that was approved by his --

CONSTANTINE ALEXANDER: I understand. To what extent what they have before us tonight is different from what was approved?

NANCY NORDMAN: Oh, okay. I'm not sure I can track all of it.

CONSTANTINE ALEXANDER: I know that. Something over here, the door?

NANCY NORDMAN: Well that was there --

CONSTANTINE ALEXANDER: Is that it?

NANCY NORDMAN: No. Then they have some height. They had but a few height -- we asked for height for all of this. They put in some for a gate and these hedges here --

ATTORNEY JAMES RAFFERTY: I think the suggestion is there are certain dimensions or language. It's the identical plan. It's a plan that was approved. It's a condition of the --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- it's the same plan. I think there may be some copy on one of the plans that wasn't on the other plan. But just for the record, it is the plan. It is the approved plan. It is a condition of the Certificate of Appropriateness that that be the plan.

NANCY NORDMAN: But the plan with those dimensions and wording were in fact debated and then added. So the plan you have doesn't completely reflect -- I don't know if it's important. But it does not reflect. So if there's some way --

CONSTANTINE ALEXANDER: I would -- what was represented to us, and I think that's the case. This plan may have more dimensions on than what the Commission saw, it's the same plan. And if we approve the relief, we have -- they have to do the plan that was before the Marsh Crown District.

NANCY NORDMAN: Oh, and not the one with the additions --

CONSTANTINE ALEXANDER: It's the same plan.

NANCY NORDMAN: -- with the change of wording.

CONSTANTINE ALEXANDER: With the changes that were approved by the

Commission.

NANCY NORDMAN: I'm sorry, I don't mean to quibble.

CONSTANTINE ALEXANDER: That's all right.

NANCY NORDMAN: I just don't know these things.

On the landscape plan they have not committed to the maintained heights of plants along my property line. The line -- and that's a source, these are my sources of concern. The line of plants they are proposing is eight feet deep along my property line. Far too wide to get a ladder across. If a line of plants is allowed along my property line, I would like that line and the line of plants perpendicular to that line to be three feet and maintained height of three feet. We have talked about this and they have said that's not unreasonable but they never -- they never put it in the plan.

They never commit to the things they talk about, and that concerns me. Personally I would not like there to be a hedge along my property line. I wish we can have more open space and less shrubbery. But if there's a hedge, I'd like the depth of the hedge reduced and the hedge moved away from my property line, the width required to prop a ladder safely against my house to reach the windows and gutters.

CONSTANTINE ALEXANDER: If I may interrupt. Speaking only for myself. Other Board members may overrule me. With this aspect of the landscaping may have been relevant to the Conservation District, it really has no relevance to the zoning relief you're seeking. It's not abutting or next to the addition they want to put. It's completely on a different part of the lot. I don't think that's for us to get involved in.

NANCY NORDMAN: Well, it is a

concern.

CONSTANTINE ALEXANDER: If we were to grant relief condition on a different part of the lot having hedges a certain height, something I'm not in favor of personally.

NANCY NORDMAN: These are things that deeply concern me.

CONSTANTINE ALEXANDER: I understand. But you have to understand what -- there are things that concern us, too. But there are certain things that we can only be concerned about with a matter of law, and we're talking about the zoning relief. And other aspects of the property use is not something that's not within our jurisdiction. We can't get into a continuing -- we can't have Mr. O'Grady running down every other month deciding how the shrubs are or how close they are to the building.

NANCY NORDMAN: I don't think we



mean to be that hard and fast about it. But to have some reasonable assurance that I'm not going to have screening just straight up eight feet deep straight up my wall. And the fact that you can't get a ladder into eight feet deep whatever, that's right on my property. Just....

CONSTANTINE ALEXANDER: What is your reaction to her request about this landscaping? She said you never made any commitments. Is there any reason why you as a good neighbor you couldn't agree here or acknowledge it?

ATTORNEY JAMES RAFFERTY: Just -- he has is my point.

CONSTANTINE ALEXANDER: All right. I wanted to give him a chance.

ATTORNEY JAMES RAFFERTY: We've been looking for good neighbors all over the street for a long, long time believe me.

CONSTANTINE ALEXANDER: Anyway, as

to this specific problem she has, and Mr. Rafferty you can instruct him not to talk to me --

ATTORNEY JAMES RAFFERTY: No, no, I want him to tell to you because I didn't want you to phrase the question -- you were building -- I think what I heard I haven't got it in writing yet.

ADAM SEITCHIK: I did -- I have spoken at length with Ms. Nordman about a number of issues. And one of the things that Pam and I have said to her is that we really feel like we can come to an accommodation around the landscaping. We have no intention of screening her windows. And one of the things that we did do is write her a letter saying that we're very happy to come up with the landscaping plan that gives her sight lines out of her window. It also gives her sight lines from her backyard so she can look into our yard. And she's asked

for a lot more specificity than we have provided. And we have a landscape designer, and what the designer has told us is we really can't say at this point exactly what the plans will be. There's no intention of an eight foot high anything. Or really we'll get in there and we'll start planting and we'll try to respect -- I think the very reasonable request she's making about sight lines and not blocking her light, but we've been unwilling to get very specific about what exact plants will be planted.

CONSTANTINE ALEXANDER: But you are specific you are committing to working in good faith?

ADAM SEITCHIK: Absolutely.

CONSTANTINE ALEXANDER: As a good neighbor for what works for both of you.

NANCY NORDMAN: The plan does show eight feet of hedge. Eight feet. The plan shows it. There's a lot of measuring

in and it's to scale. And he told me it was eight feet. He did send me a letter saying they would keep the hedge to three feet, but again, it's not committed to putting three feet on this plan. And it's like we said --

ATTORNEY JAMES RAFFERTY: In all fairness, I don't mean to interrupt, but the presumption here is there's a right to access the property with a ladder and a few other things, and, you know, those -- that isn't set forth anywhere in the title to these properties. That's the result of accommodations between good neighbors. So, there has been a lot of dialogue. And I don't mean to take up any more time, but we really are in an area now where I want your hedges to be so wide so then I can go on your property with a ladder, which is a neighborly thing to do, but ironically in the case that we're not hearing tonight, what we've tried to show to Ms. Nordman is

that the as of right parking solution goes contrary to all the arguments you're hearing tonight. It brings the parking further into this area, reduces the open space. And we have tried to say we'd rather -- that's why we're getting the relief on that. Now, that's not in tonight's hearing. In the context about all this concern about this yard and how this house which has a zero setback on this yard, this house is loss of the abutters's open space, a comment you hear regularly, it's a little ironic that we're sitting here talking about preserving open space when the concern about the parking, the parking relief actually was designed to maximize the open space.

NANCY NORDMAN: I don't understand -- this happened in the Historic Commission a lot, too. Mr. Rafferty got to talk any time, all the time he wanted to, and he got to -- like and it was our

turn to talk, he got to talk and we couldn't talk when he talked. And he also gets to talk about topics we're not talking about. I have a lot. If Mr. Rafferty wants to talk about parking, I've got three pages of parking.

CONSTANTINE ALEXANDER: We're not going to talk about parking.

NANCY NORDMAN: But Mr. Rafferty has referenced that as a reason why we shouldn't -- I shouldn't ask them. You know, if --

CONSTANTINE ALEXANDER: Let me cut you short. Mr. Rafferty's point and my point frankly, is what we're talking about for the last ten minutes or so, and I'm happy to keep going on this, but it's issues of neighborliness, working things out. They're not the issues that we're going to vote on tonight from a Zoning point of view. And I'm very happy to get these aired out. And I'm trying to get a

commitment, and I think I've gotten that from your neighbor to try to work in good faith to try to solve the problem. But we're not going to be able to write down tonight as part of our Zoning relief exactly the way the landscaping has got to be. They have to comply with what they got from the Certificate of Appropriateness from the Marsh -- I never get it right -- Half Crown District. But beyond that, I don't, from a zoning point of view, I don't want to get into landscaping the rest of the yard, I'm sorry.

NANCY NORDMAN: With regard to the height. I guess I don't understand. When I in good faith if I mean to do something, I have no problem writing it down. If I say I'm going to give you -- keep your hedge at three feet, and I write you a letter to that, mind you the first one was not dated or signed, but then later on at

the meeting it was dated and signed it.  
But we're not -- it seems legalistic. But  
we're not going to write that little  
number on the --

CONSTANTINE ALEXANDER: You've  
made that point already. If they haven't  
committed in writing exactly what you want  
them to commit to, you understand that.  
They have committed is what I've said and  
to work with you. And I don't think from  
a zoning point of view, again my members  
of the Board can overrule me, are going to  
any farther with regard to this issue.

NANCY NORDMAN: Well, I will stop  
on that except to say to you that I have a  
neighbor, in fact, a neighbor of one of  
the abutters who the people planted --  
there was no -- the height wasn't  
regulated or agreed upon, they have cedar  
screening, absolutely complete --  
completely against their wall, straight up  
to the side of their building without --



and I guess -- well, I don't understand why people cannot give me the assurance I need that, in fact, that is what the original plan said, screening. Screening. So it is concerning me.

There is a shed and you were given a design for that, and it's directly in my view. The landscape plan shows it oriented facing me, your landscape plan. The architect's plan shows it oriented facing their house. When you look at this plan, here it says left side, right side --

CONSTANTINE ALEXANDER: All I can say to you is, if this shed complies with the Zoning laws in terms of the setbacks and the like, it's not an issue for us that we have any jurisdiction over.

NANCY NORDMAN: Well, then maybe, maybe I was misled as to believing that you did want to know any things that were concerns and perhaps they would want to

know in a public venue so they could address them in a neighborly fashion or whatever.

CONSTANTINE ALEXANDER: I think you have communicated your concerns to them before, I do have a suspicion to that. I think what's before us, what's relevant, is things that are pertaining to the relief they're seeking: The addition, the setback issue, and this shed which is in a different part of the lot which is not at all close to what we proposed in terms of the addition strikes me as not relevant to what's before us tonight. And unless that shed has other zoning problems, which would be for another day, it's not before us tonight. It's not relevant for our determination.

NANCY NORDMAN: I see. Well, that was the last thing I was to do is to show you what the shed's right across the fence look like. And because I think others are

my neighbors, I don't know if they want to speak to it.

CONSTANTINE ALEXANDER: They'll have an opportunity.

NANCY NORDMAN: Oh, okay. But I'll show you the pictures. And I haven't shown you these, I think. This is their -- this is where I look out from my backyard (indicating). This is the back fence along her house (indicating).

CONSTANTINE ALEXANDER: Right.

NANCY NORDMAN: And they're going to put a shed right here (indicating).

CONSTANTINE ALEXANDER: Right.

NANCY NORDMAN: And these are sheds over here --

CONSTANTINE ALEXANDER: Right.

NANCY NORDMAN: -- on the -- just on the other side of the fence, the height of the fence. This is the neighbor on the south side, these sheds and her house (indicating). And this is the another

picture of the sheds and her house. And I guess the reason I brought it up is because the Crown Marsh Neighborhood Conservation Association included it in its landscape approval and they said in the letter that you have that the height and size of this shed should be reduced, and that a variance be sought to put the shed against the back property line in line with sheds on the property south. In other words, to make it look like and fit and that be appropriate. Because it is 15 feet high. It's four feet lower than the addition that they're building. It's a substantial building just short of what's required to be beyond the shed, again, the dimensional thing. So there are a couple concerns.

I'd like to see the shed cited as on the landscaping plan as opposed to the architect's drawing. Unless the width is changed to the (inaudible). And I hope it

will be used -- I'd like to see it used exclusively as a gardening shed because as it stands, the design and size make it suitable for a studio.

And I want to thank you for letting me express my wishes on the plan the topics introduced by the petitioner's plans --

CONSTANTINE ALEXANDER: Thank you.

NANCY NORDMAN: -- at Nine Sibley Court and I apologize if I went on.

CONSTANTINE ALEXANDER: No. Thank you very much.

NANCY NORDMAN: Too much of a school mom-ish female.

CONSTANTINE ALEXANDER: No apologies necessary.

NANCY NORDMAN: Thank you.

CONSTANTINE ALEXANDER: Before we get to any other questions. I have a question for you, Sean.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: This shed, .

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: As I recall from our past decisions, it counts towards the FAR?

SEAN O'GRADY: Unless it's for bicycles, yes.

CONSTANTINE ALEXANDER: Okay. I assume, it sounds like from the size of the shed it's not for bicycles but for bicycles plus. I just want to make sure with the FAR calculation shed -- if the shed goes into the FAR calculation, are they still within the allowable FAR?

SALLY DEGAN: 72 square feet.

ADAM SEITCHIK: 72 square feet.

CONSTANTINE ALEXANDER: I'm sorry?

TAD HEUER: And you have .8 to play with?

ATTORNEY JAMES RAFFERTY: We're still below --

TAD HEUER: .08?

ADAM SEITCHIK: We have about 229.

ATTORNEY JAMES RAFFERTY: Square feet.

CONSTANTINE ALEXANDER: So even if it's --

ATTORNEY JAMES RAFFERTY: There's no relief being sought for the shed.

CONSTANTINE ALEXANDER: I understand that, but I want to make sure --

ATTORNEY JAMES RAFFERTY: Understood, right. And there is a recent amendment to the ordinance around storage for bicycles and how that calculation gets done. But it's intended and it's cited on the plan as an accessory structure for purposes of setback. And height, it was a suggestion that the petitioner seek relief to make it non-conforming in terms of setback.

CONSTANTINE ALEXANDER: I heard

that.

ATTORNEY JAMES RAFFERTY: Yes, that's only a suggestion. That was a suggestion from people that don't spend a lot of time here on Thursday nights was my view. We tried to limit the expected relief, but that the applicant shouldn't burden the Board with it.

CONSTANTINE ALEXANDER: Tad, you wanted to ask a question?

TAD HEUER: Well --

CONSTANTINE ALEXANDER: I'm interested in hearing further public comment, but if you had a question about what the petitioner just said you best take it now otherwise we'll keep going.

TAD HEUER: I have a random questions but for Mr. Rafferty --

CONSTANTINE ALEXANDER: You have any comments?

DOUGLAS MYERS: No, I'm fine.

CONSTANTINE ALEXANDER: You want



to speak? Please speak.

LAURIE DIETZ: My name is Laurie Dietz, D-i-e-t-z. I'm a direct abutter. I am the general partner of the Sheldon Maryville Dietz Limited Partner and I own -- we own 20 percent of the Sparks Place Condominium which is the common lot line to the Southern side of the lot in question. I also own Three Sparks Place which is my home, which my windows from my daughter's bedroom and my office look directly out to the property. I understand that we're here tonight to discuss a variance.

CONSTANTINE ALEXANDER: Excuse me. Can you just point on here where is your house roughly?

ATTORNEY JAMES RAFFERTY: You wouldn't find it on there.

LAURIE DEITZ: Why not? Do you have a south there?

CONSTANTINE ALEXANDER: Okay.

NANCY NORDMAN: You had a picture of it, Laurie --

ATTORNEY JAMES RAFFERTY: I was going to assess this plot where Ms. Deitz's house is.

LAURIE DEITZ: It's south. It's right there. I can show it to you if you pass me -- you don't ever really want to communicate with me.

CONSTANTINE ALEXANDER: Please, please, let's -- that doesn't do us any good.

LAURIE DEITZ: This is Sparks Place --

CONSTANTINE ALEXANDER: Right.

LAURIE DEITZ: -- 16-foot private way. My -- I have it -- my daughter's bedroom and my -- our sheds to the condominium, which is here (indicating) which I think you've already heard stories about that. Here we have a length of sheds as she said.

CONSTANTINE ALEXANDER: Right. I saw the pictures.

LAURIE DEITZ: -- which are six and a half feet high.

CONSTANTINE ALEXANDER: Right.

LAURIE DEITZ: This back fence is five feet, seven inches high.

CONSTANTINE ALEXANDER: Right.

LAURIE DEITZ: And my daughter's bedroom and my office area are on an easement.

CONSTANTINE ALEXANDER: Right.

LAURIE DEITZ: With a shed roof which I designed specifically to try and have a low impact on the shallow lane which no one else seems to care about them.

CONSTANTINE ALEXANDER: Okay.

LAURIE DEITZ: It has a maximum height of 12 feet, and a 12 foot width and a depth of 20 feet.

CONSTANTINE ALEXANDER: But from

here to here there's a fence. There's open space other than the fence.

ATTORNEY JAMES RAFFERTY: Mr. Chairman, this is off the road, then there's the way, she's on the other side of the way Sparks Place.

CONSTANTINE ALEXANDER: Okay.

LAURIE DEITZ: No, no, no. Look it, I'm not on the other side of the way. You don't seem to -- I'm not discussing this with you. I'm talking to the Board right now.

CONSTANTINE ALEXANDER: Okay. And using this, the plot plan, show me where you are. I'm dimensionally challenged so I need some help.

NANCY NORDMAN: In the pictures are a picture of her house.

THE STENOGRAPHER: Please speak one at a time.

LAURIE DEITZ: I think it would be better if we each had our little time with

each other.

CONSTANTINE ALEXANDER: Here is the petitioner's house (indicating) and the structure that they're going to put the addition. Here's the side yard (indicating).

LAURIE DEITZ: Here are the sheds (indicating).

CONSTANTINE ALEXANDER: Those are the sheds that I saw in the picture, right.

LAURIE DEITZ: Those are the sheds that belong with this, of which I am 20 percent owner.

CONSTANTINE ALEXANDER: Right.

LAURIE DEITZ: This is open space.

CONSTANTINE ALEXANDER: Right.

LAURIE DEITZ: This is the end of Sparks Place.

CONSTANTINE ALEXANDER: So this is another private way over here?

LAURIE DEITZ: This -- Yes.

CONSTANTINE ALEXANDER: Okay, okay.

LAURIE DEITZ: Yes. We are parallel. There are several private ways -- I'd just like to say one thing. I raised at the hearings previously -- I went to all the other hearings. This neighborhood is a network of private ways, and even though the Commission has only to do with views from public ways, there are those of us who live on private ways who do have see-through views and are blocked by certain views or would be affected by certain things which may not be in the specific thing that they are discussing in their variance, but I'm trying to say Mrs. -- I can't ever remember how to pronounce your name. Perhaps she goes on and on, but there's a full picture that I think has failed to be brought up over the last four hearings even. Because no one has ever looked to the south of the fence, for

instance. And I have kept saying that to the south of the fence we have a private way. This is my daughter's -- this is my office right here (indicating). I have a window right here (indicating). We have two -- another big window right here and a small window right here (indicating). That is directly straight through here and this is the view from those windows (indicating). I've made these pictures for you so that you can see a little bit of what we see. This is her house (indicating). This is the existing house and the height (indicating). This is the existing fence, and the height is five feet seven. If this is the top of a 12-foot roof in the distance, but we're a number of feet away, that's the top of our shed roof, and this is the five foot fence and these are the tops of windows here (indicating). And a shed at 12 and a half feet would come to this way on the tree,

but the tree will no longer be there (indicating). So basically I'm saying this is the view from Shaler Lane. And the people who live in Shaler Lane might only be tenants, but they are allowed to have the right of air space which I think our neighborhood needs and deserves.

So, I feel it is very important for the Board to look at the close -- these kinds of things they show something, but the picture shows the true -- this is her house that's -- this is the lot line (indicating). So in fact, you know, the whole thing of the plantings, the private terraces for outside eating, the lighted areas, all these things that are supposed to come up in the landscape plan, light or any other thing, is very, very sensitive in such a close-knit neighborhood. Noise. I live three feet away from Shaler Lane. So what I'm trying to say is that the place where they're planning on putting --



this was to do with the parking, which we're not dealing with tonight. So basically their addition is going to come out to about here (indicating).

CONSTANTINE ALEXANDER: Right.

LAURIE DEITZ: Which I can't really, you know, I can't say anything about it really because that's not -- it's a 12 and a half foot high shed sitting right out from my viewpoint which would change the whole nature of the neighborhood. This is from Mr. Sarouse (phonetic) from the back side of the house to show you. The neighborhood is founded on having views that see through, and my family came to Cambridge in '61 as you know and created a tremendous amount of open space in which these people are taking -- will be having advantage of in the south side a full sun. They are on the north side and I would like to be protected from seeing a 12 and a half foot

high shed. However, no -- they said they're putting it within the setbacks. I'd like to ask Sean what the setbacks for a backyard -- since they're -- the back line is considered the backyard what the setback from there?

SEAN O'GRADY: Five feet.

LAURIE DEITZ: So if it came out five feet, it would be approximately coming in front of our sheds. So it would stand up 12 feet over -- it would stand up six and a half feet over our sheds and look totally ridiculous. And that is why -- and I understand this is not really to do, but I do think it has to do with the additional density of the area and it has a big impact. So this is why the Commission didn't know that the proposed garden shed shown in the plan, though not visible from the public way, seemed excessively large and encouraged you to reduce the size and height and also

consider moving it closer to the back property line with a variance similar to the location of the sheds of the adjoining neighbors, and also to reduce the roof.

I don't see why you need a 12 and a half foot high shed to store a snow blower and a couple of bikes. Is there a reason for it, the height?

CONSTANTINE ALEXANDER: No, no.

TIME HUGHES: We're not going to get into a dialogue about something that's not even before us tonight.

LAURIE DEITZ: Okay, well -- no, it's a problem. But the problem is who down the road is going to make some kind of comment about what the situation actually is?

CONSTANTINE ALEXANDER: I'll try one more time. Try to understand -- let me try to answer your question. We are a Zoning Board. We enforce a --

LAURIE DEITZ: I know what you do.

CONSTANTINE ALEXANDER: Let me finish -- the zoning laws. There are certain things that we consider and have to deal with from a zoning point of view. There are other things that we have no jurisdiction over. Where people want to put a shed in a yard that complies with the setbacks and the FAR, they can put whatever size shed they want to put, and they can locate wherever they want in the yard. Similar, if they want to sit in the yard and make -- and have a patio and have a party subject to the noise ordinance or other laws, that's not a zoning issue. We don't have jurisdiction over that. It's not before -- Mr. Hughes is saying it's not before us.

LAURIE DEITZ: I understand.

CONSTANTINE ALEXANDER: What we do have jurisdiction over, if somehow this shed had an impact related to the addition that they want to put on for which they do

need zoning relief, we could deal with the shed, we would deal with the shed. But I don't see personally -- the shed is completely separate from that. It may be of relevance and of concern to the Marsh Half Crown District, that's their jurisdiction. That's not ours. And I don't want to get into the question of the shed because that is not before us. We don't have control over it.

LAURIE DEITZ: I understand. Then I wanted to know then what is the question of an addition to an addition -- what about the previous addition that was put on the house earlier, does that count as an addition to that house?

CONSTANTINE ALEXANDER: I'm not talking about the addition of the previous addition. All I know is we have a house sitting there. They're proposing to put on an addition.

LAURIE DEITZ: Yeah.

CONSTANTINE ALEXANDER: Some of that addition is a matter of right. They can do it.

LAURIE DEITZ: I understand that.

CONSTANTINE ALEXANDER: All right. The other part of the addition is they've got an issue simply rear yard setback, it's too close to this institutional structure here. It has nothing to do with people who live over here (indicating). Technically it has nothing to do with Ms. Nordman's house over here (indicating). And so. That's why --

LAURIE DEITZ: I understand that.

CONSTANTINE ALEXANDER: I'll let people talk -- let me finish.

The point of the matter is we don't deal with those issues. Those are issues that are neighborly issues. You either resolve them with neighbors or you don't, or if there are other parts of the laws of Cambridge that are being violated, you

have other recourse. But it's not for us tonight.

LAURIE DEITZ: Well, I just think that what I'm saying is that the fuller picture to the Board in terms of what the actual picture is when you are working with people who are not coming forth and offering to do any kind of neighborliness in terms of what you're asking for, then I do think that that should be considered and I do think that a 72-foot shed with a 12 and a half foot height if you put it in cubic feet is a dense structure. Okay?

Now the next thing I have is one more question and then I will leave you.

CONSTANTINE ALEXANDER: Okay.

LAURIE DEITZ: I want to know what the final outcome of the drainage report and soil report that is requested for the -- is it in the file now?

CONSTANTINE ALEXANDER: I saw that actually first in the Marsh Half Crown

District. There's nothing in the file.

What is the story with the drainage issue?

ATTORNEY JAMES RAFFERTY: Did you look --

LAURIE DEITZ: Sorry, can I read this last section?

CONSTANTINE ALEXANDER: Well, no, you asked the question do you want him to answer it?

LAURIE DEITZ: Well, no, I want to say approval was granted on the following conditions.

CONSTANTINE ALEXANDER: Yes.

LAURIE DEITZ: That the applicant submit a landscape plan for review and approval at future publicly advertised meeting at the Half Crown Commission Architect's Committee. That the ridges of the new roof construction be reduced by a minimum of one foot. That the applicant must submit a soil and a drainage report to ensure that the new construction will



not have adverse effects on the stability of the soil and/or lead to flooding on the site or neighbor's properties.

I'm bringing this up because I was denied a variance because of a slight little problem to do with the drainage.

CONSTANTINE ALEXANDER: Ms. Deitz, I'm going to stop you right now. I know you were here before, I sat on that case.

LAURIE DEITZ: I know that. I'm not --

CONSTANTINE ALEXANDER: Let me finish. Let me finish. Let me finish. Listen, we're not going to reopen that case.

LAURIE DEITZ: But I want to --

CONSTANTINE ALEXANDER: Well, then I don't -- I don't want to hear about this.

LAURIE DEITZ: The drainage situation in the parallel areas.

CONSTANTINE ALEXANDER: I am

pursuing that.

You were asked to submit a report apparently, what happened with that? Can you just give me --

ADAM SEITCHIK: Can I respond to that?

ATTORNEY JAMES RAFFERTY: Yes.

ADAM SEITCHIK: There were three conditions and we got a Certificate of Appropriateness with three conditions. The first two we've met.

CONSTANTINE ALEXANDER: I understand that.

ADAM SEITCHIK: Third, we asked Paul Trudo (phonetic) if we can wait to see if we get a variance approval, because doing the soil and water study would be a considerable expense. And one, it can make sure the plans as designed were approved. But we will not be able to get building permits. Assuming we do get a variance here, until we do a soil and

water sample. He said it was agreeable to us doing that study subsequent to this hearing.

ATTORNEY JAMES RAFFERTY: It's a condition of the Certificate of Appropriateness.

CONSTANTINE ALEXANDER: I'm just trying to remember what the condition was. It says that you submit a report. It doesn't say the report has got to be -- can you read me that condition again if you have it handy? You have it. You just read it to me. I want to make sure we haven't left a loop hole here.

If applicants submit a soil and drainage report to ensure that the new construction will not have adverse effects in stability of the soil.

Okay. It is covered. So if we were to grant relief, if we were to grant relief, certainly we would grant relief on the condition that they comply with the

Certificate of Appropriateness that they have. Which they'd have to do anyway. And so if we did get the relief and they couldn't submit the report that's required here, they could not go forward. The variance would be meaningless to them.

LAURIE DEITZ: So the Board is not interested in the soil --

CONSTANTINE ALEXANDER: That's not what I said.

LAURIE DEITZ: Okay. I'm trying to understand.

CONSTANTINE ALEXANDER: What I'm saying is this issue will be dealt with. It's not to be dealt with tonight.

LAURIE DEITZ: Okay.

CONSTANTINE ALEXANDER: And your assurance is that it will be dealt with in a way that does not adversely impact the neighborhood because of soil and drainage. They have to satisfy that condition.

LAURIE DEITZ: Okay.

CONSTANTINE ALEXANDER: We don't have to worry about that tonight because if they don't satisfy it, they can't go forward. We don't have to deal with that. It's going to be dealt. And it's going to be dealt with in a way that protects the neighborhood, but it is not before us tonight. Okay?

LAURIE DEITZ: Okay. And I'd like it said on the record that I -- I would like it to say on the record that I feel that the impact of what they are doing is -- the house itself is changing the neighborhood quality and is increasing density, but that I think more over that is that the open air space and other space issues are being impacted severely by this project. And I would like to finish with the fact that I hope to follow up with understanding more about the situation in the future.

Thank you.

BRENDAN SULLIVAN: The document is in there. Can you pull it out?

CONSTANTINE ALEXANDER: Yes. I know it's in here. Yes, here it is.

Is there anyone else who wishes to be heard on this petition?

(No response.)

CONSTANTINE ALEXANDER: The Chair sees no one else who wishes to speak on this matter.

Let me at this point read into the record, letters that we have received one way or another from abutters and in no particular order. I can find three in the file.

One is from Nancy Nordman at 23 Sibley Court. "I am an immediate abutter to Nine Sibley Court. My home is at 23 Sibley Court. The petitioners recently bought this property and knew exactly what they were buying. The proposed addition and parking intrudes into an open space

right next to my kitchen and living room. They do not have a legal hardship. It would be unfair to grant this variance since it has no legal basis and creates a substantial change to the area next to my property. Sincerely, Nancy Nordman."

There is an e-mail from Laurie Doyle D-o-y-l-e. "I am writing in support" -- I'm sorry, Ms. Doyle is an owner at 98.5 Foster Street. "I'm writing in support of the application for renovations at Nine Sibley Court. This has been an abandoned property for several years. It's very unsightly and would be a hazard to neighborhood if it continues to remain unoccupied. The owners have made every effort to accommodate the various complaints of the neighbors. The most recent plan is reduced in size and would have little impact on surrounding properties. The owners have cleaned up the property, removed piles of trash and

debris from the back of the house where my property abuts, and are committed to improving the site. I would add that I bought another unoccupied property on the opposite corner of my lot, so I am pleased to see some attention to the Sibley Court side. This is a difficult property to work with and these owners have been willing to tackle the issues while being very sensitive of the wishes of the neighbors. I strongly urge to the Board to allow this project to move forward."

And lastly we have an e-mail from Ed Serues S-e-r-u-e-s.

ED SERUES: Sir, if you want to save yourself, I am Ed Serues. And I am on Foster Street.

CONSTANTINE ALEXANDER: No, no, you've got to come forward so we can take -- I take it what you're going to say is the substance of what's in this letter so I don't have to read the letter into



the file?

ED SERUES: Have I sufficiently introduced myself?

CONSTANTINE ALEXANDER: Okay. You have if the stenographer has it.

Do you have it?

THE STENOGRAPHER: Yes.

CONSTANTINE ALEXANDER: You've sufficiently introduced yourself.

ED SERUES: Okay. I was seeking information on that query and I've gotten it.

CONSTANTINE ALEXANDER: Oh, you've gotten it? So there's no need to read the letter then. Thank you very much. And the audience thanks you, too.

That's the written commentary in the file.

Mr. Rafferty, before we take comments and further comments from members of the Board, I'll give you a chance to conclude your remarks. And by the way,

you should address the Special Permit and the relocation of the windows and doors. I don't think we've -- others have touched on it but I don't think you have.

ATTORNEY JAMES RAFFERTY: I might defer to the architect on exactly which ones, but the rear wall does have some changes. The one that abuts the institutional building.

SALLY DEGAN: That's the existing.

CONSTANTINE ALEXANDER: These are the same plans that we have in our files?

ATTORNEY JAMES RAFFERTY: Yes.

SALLY DEGAN: You don't have a plan of the existing --

CONSTANTINE ALEXANDER: Is this an elevation?

ATTORNEY JAMES RAFFERTY: They have it in the file. It's part of their file. Do you have the proposed?

SALLY DEGAN: Yes.

ATTORNEY JAMES RAFFERTY: So if

you compare the rear elevation proposed with the rear elevation existing, and that's --

CONSTANTINE ALEXANDER: Isn't that here? Isn't that the same?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Okay. So, we do have it. All right.

ATTORNEY JAMES RAFFERTY: Yes -- no, I filed it. We have it.

CONSTANTINE ALEXANDER: I'm sorry, I interrupted you. You were going to tell me where the windows....

TIM HUGHES: Can you draw them on the little model for us?

CONSTANTINE ALEXANDER: To scale?

SALLY DEGAN: So on the front -- you want me to show you on this?

CONSTANTINE ALEXANDER: He was kidding.

SALLY DEGAN: So on the front elevation --

CONSTANTINE ALEXANDER: Right.

SALLY DEGAN: -- we have  
relocated, you see the main gable?

CONSTANTINE ALEXANDER: Yes, right  
here (indicating).

SALLY DEGAN: Okay. To the right  
of that we have two windows in that  
elevation. There used to be one.

ATTORNEY JAMES RAFFERTY: Show the  
Board.

CONSTANTINE ALEXANDER: I would  
like to see it for the comparative basis.

DOUGLAS MYERS: Just point on the  
model which side of the building.

ATTORNEY JAMES RAFFERTY: We can  
lift the model out probably.

CONSTANTINE ALEXANDER: That's the  
front right there.

SALLY DEGAN: So on the front we  
have changed these two windows and we've  
added one. You can see there was one  
there (indicating).

CONSTANTINE ALEXANDER: Right.

SALLY DEGAN: And now there are two. Okay?

CONSTANTINE ALEXANDER: And those windows actually face on Sibley Court or they face on the building to the right?

ATTORNEY JAMES RAFFERTY: They face the McCormacks who have spoken in support of the variance and the relief.

CONSTANTINE ALEXANDER: Okay. And you're aware -- people have spoken in favor -- you're aware of where the windows are going to be located? I don't hear any objection. Okay.

SALLY DEGAN: Okay, so then we'll turn to this side (indicating).

CONSTANTINE ALEXANDER: Right.

SALLY DEGAN: Which is the right.

CONSTANTINE ALEXANDER: And this side is facing towards Foster Street?

SALLY DEGAN: Towards Foster.

CONSTANTINE ALEXANDER: Okay,

right.

SALLY DEGAN: So there were two windows.

CONSTANTINE ALEXANDER: Right.

SALLY DEGAN: And now -- no, down there, sorry. There's a door and the windows (indicating).

CONSTANTINE ALEXANDER: Is this the famous door from the Historical Commission?

ATTORNEY JAMES RAFFERTY: Yes.

SALLY DEGAN: And because we've added the little gable in, there's a window in that gable.

As we turn now to the rear, the side that abuts the Harvard property, that is this elevation (indicating).

CONSTANTINE ALEXANDER: Yes.

SALLY DEGAN: And it's there.

CONSTANTINE ALEXANDER: You've added a good number of windows.

SALLY DEGAN: Yes. So, one window

only, and we added another. And we've added --

CONSTANTINE ALEXANDER: Two up here (indicating). That's going to be part of the addition, right?

SALLY DEGAN: Uh-huh, yep. And these two (indicating).

CONSTANTINE ALEXANDER: And there's no door anymore?

SALLY DEGAN: Correct.

TAD HEUER: But these aren't relocated.

CONSTANTINE ALEXANDER: You've taken away the door. In terms of what's there now, you've eliminated the door, and you've added I guess a window here, right?

SALLY DEGAN: Yes. Right there (indicating).

CONSTANTINE ALEXANDER: These windows are a result of the new construction so they don't count. Okay.

SALLY DEGAN: Okay?

CONSTANTINE ALEXANDER: That's it?

SALLY DEGAN: And then the last elevation, which is that left one over there (indicating).

CONSTANTINE ALEXANDER: And I'm sorry, locate it on the plan for me. Is that the one that's closest to the -- yes, okay.

SALLY DEGAN: There's Sibley Court.

CONSTANTINE ALEXANDER: Got it. That's the one that Ms. Nordman is most interested in. Go ahead.

SALLY DEGAN: Yes.

So the addition has the doors on the bottom portion.

ATTORNEY JAMES RAFFERTY: I think you should just note that's a conforming wall.

CONSTANTINE ALEXANDER: I understand that. I'm sorry, that's this over here (indicating).



SALLY DEGAN: Yes. So that was the front entry door.

CONSTANTINE ALEXANDER: That's right.

SALLY DEGAN: The front entry doors moving down. Looking back exactly. And the new addition then has the sliding doors on the lower level and the window on the top.

CONSTANTINE ALEXANDER: Questions on that? Okay?

Any other comments, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: No, thank you. I think the Board has a full appreciation of the relief. It is limited to the rear setback, and I would say that the testimony of the most immediate abutters, both the McCormacks and the Doyles, suggest a level of cooperation and consensus building that I think the Board would typically expect from someone seeking relief in a case. I would suggest

that the size of the lot, the fact that the combined rear and front setbacks would mean nothing to be constructed. There was attention paid to make certain that this did meet the front setback. So it is not any closer to Ms. Nordman's property than zoning would allow. This side yard is significantly exceeded, so it is not any closer in that direction. You've heard testimony tonight that the five-foot setback should be reduced in this area, we're only proposing eight-foot setback here. That building would have the same effect setback-wise if it were reduced. So it is, it is a lovely neighborhood. There's been a great attempt here to try to come up with an addition that met the context and scale test. And I think when you're below the allowable FAR and exceeding the open space in a district in a street where one is hard to find another property that does that, it's been a

challenge.

CONSTANTINE ALEXANDER: Thank you. I think it's time for comments by the Board members. I'll start with the oldest and wisest members of the Board. Brendan?

BRENDAN SULLIVAN: I don't know. I'm troubled because I think we're starting to in-fill yards and looking down from Sparks Street down Sibley Court, you know, you can look forward straight along toward the back of Shaler Lane, and I think that now all of a sudden that's going to get blocked. And I think it doesn't back the people on Shaler Lane because it's facing south. They're going to be deprived of some sunlight and air. And I think it does impact the corner house there, the one across the line. So I'm -- I'm troubled by it. I think they can do quite a bit as of right. They bought the house as is and can do quite a bit on the second floor of that house to

increase the floor area. And that should be sufficient. And also the basement with storage rooms.

CONSTANTINE ALEXANDER: I want to pursue that.

BRENDAN SULLIVAN: And sliding glass doors out to a --

CONSTANTINE ALEXANDER: I'll ask Sean a question. If they use this basement, six foot, eleven basement for residential purpose for bedrooms, whatever.

SEAN O'GRADY: Okay.

CONSTANTINE ALEXANDER: What happens? That puts them immediately in violation of the Zoning laws? Is that a neighbor or someone could seek enforcement action, am I right about that or not?

SEAN O'GRADY: Well, in the nine years I've been here, I've not been involved in that. It's clearly a violation. The six, eleven basement rule

just invites people to abuse it.

CONSTANTINE ALEXANDER:

Absolutely.

SEAN O'GRADY: There is not any new construction where we don't see it. Thankfully I've never been called out on an enforcement. I wouldn't even know how to go about doing that. I'm not going to be peeking into people's windows.

CONSTANTINE ALEXANDER: It's also fair to say if someone did call you, and said that area is being used for residential purposes, we think it's in violation of the Zoning By-law, you would have an obligation to examine that and make a determination?

SEAN O'GRADY: Well, the question would be would I have the ability to examine that?

CONSTANTINE ALEXANDER: Why would you not have the ability to examine that?

SEAN O'GRADY: Well, we're not the

police. We don't have warrants. We can't go kicking in doors and checking to see if people have stuff in their basement. I can go to the door and ask them and they can tell me to go away. I think that would be sufficient frustration of my enforcement. I'm not, you know -- I can't say for sure, but I -- it would be an interesting time in front of a judge convincing him that we needed to do this short of some evidence. But like I said, it's never come up.

ATTORNEY JAMES RAFFERTY: Well, there was a case not too long ago, I won't name the individual on -- he put a hardwood floor on a six level basement on Antrim Street. It was subject of -- the neighbors were very attentive, and he was -- there was an enforcement action. But there's no question that there's all types of zoning violations that occur. It cannot be used for open space or liveable

open space. I know there's been discussions about relevance.

I just want to say to the extent the Board's interested, we did prepare in the context of the hearing, shadow studies and light studies that shows that there is no impact upon the property from this addition to the Shaler Lane property.

CONSTANTINE ALEXANDER: A little bit late to be bringing that up, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Well, I'm only responding because one of the members said that he was concerned about the impact of --

CONSTANTINE ALEXANDER: Then now the neighbors will have an ability to review that shadow plan and then comment on it. So I'd rather -- you can make a representation to -- it's not going to be any impact. I don't want to put this back into the record and go all over again.

Brendan, you all set?

BRENDAN SULLIVAN: I'm all set.

CONSTANTINE ALEXANDER: Tad?

TAD HEUER: So the front door is going to be -- it's on the left side on the left; is that right? Where it is now is being moved closer to the street?

SALLY DEGAN: Yes.

TAD HEUER: Is that correct?

What is the -- maybe just point it out in the landscaping, what's the plan egress to the street from the front door and how does it differ from the egress that is there now? I guess I'm thinking about the comment that there's going to be more intrusion into the open space because of this. So, if you can just --

SALLY DEGAN: Is this orientation helpful?

TAD HEUER: Yes.

SALLY DEGAN: Okay. So, the existing house sitting there, the door was



there at that far side of it. Now the door is there (indicating).

CONSTANTINE ALEXANDER: In that L? Okay.

ATTORNEY JAMES RAFFERTY: It's less.

TAD HEUER: It's close to the street. There's a shorter distance between the way and the front door than on the existing structure?

ATTORNEY JAMES RAFFERTY: And it's not as deep into the lot as it previously has been. The photo -- the current entrance is at the very -- it's at the rear corner of the building now. It will be brought forward and it will be (indicating)....

CONSTANTINE ALEXANDER: So it will be over there?

ATTORNEY JAMES RAFFERTY: It will be over here.

TAD HEUER: And am I right that if

you did not have the rear two tenths of a foot intrusion, you would not be in force?

ATTORNEY JAMES RAFFERTY: No, you're wrong. We are -- while the existing setback is preexisting on only eight feet, we are extending that wall. So it's not the two tenths, it's the fact that we're continuing along that line.

TAD HEUER: Into the rear setback?

ATTORNEY JAMES RAFFERTY: Yes.

I just, in response to that comment. A lot of what the discussion had been, you know, there are a number of near abutters, very near abutters, and as is often the case, and the shed might be an example of it. There is often as of right solutions that are very contrary of the expressed interests of certain abutters. In this case you'll notice that what's being proposed here is an attempt to try to distribute the mass in some way that's somewhat equitable. So, while it is true

that there could be more mass here allowed, there was some concern about this abutters, this butter, these other abutters that are much closer. So there has been a bit of a balancing of distribution of the mass here. So I do think the Board should be mindful that to push a property owner into an as of right solution that would suggest a full two-story element here as opposed to a 12 by 14 addition over here (indicating), where there is this ample open space, may be an outcome that is really not at all consistent with the concerns that have been expressed here tonight.

TAD HEUER: My last question tonight, I fully understand that we are not getting into parking, I don't mean to do so, but looking at the dimensional form, it states that, I believe, there are zero existing requests, there is one, and ordinance requirements are one. If we

grant the relief that's being sought tonight, it cannot go forward until a parking is satisfied or not? No? Just clarify that for the record.

ATTORNEY JAMES RAFFERTY: It's a preexisting single-family house without a parking space. That wouldn't change. The forms asked for what it will be when we're done. And if the parking relief being sought wasn't approved, there are, with a lot of this size, there are as of right parking solutions that could be explored. But, no, there wouldn't be any -- in fact, this house, like most of the houses around it, historically has not had on the street parking space.

TAD HEUER: Thank you.

FEMALE AUDIENCE ATTENDEE: I hate to do this.

CONSTANTINE ALEXANDER: We closed public comment.

FEMALE AUDIENCE ATTENDEE: He made

a statement that's not correct. As of right, but they have no access to the as of right.

CONSTANTINE ALEXANDER: That goes to the parking. We're not going to get to that tonight. You'll have another night to --

FEMALE AUDIENCE ATTENDEE: I'm just trying to be a Rafferty, sorry.

CONSTANTINE ALEXANDER: Tim.

TIM HUGHES: This is the first time that I've ever seen a situation in which the front yard setback and the backyard setback overlap so that you couldn't possibly build anything on this lot. The ordinance was imposed on this lot, not this lot imposed on an ordinance. I think that as a Board we have an obligation to give relief for setback on this particular situation. What would concern me on this lot is not the setback violation, but the density and it's FAR.

And since we don't have a violation of FAR, I don't have a problem with this project going forward the way it's been designed. And I'm totally in favor of it.

CONSTANTINE ALEXANDER: Doug?

DOUGLAS MYERS: I have to say that this is a case where that seems to be a true hardship in term -- as I understand a hardship to be defined under Zoning law. But this is really -- I'm just repeating what Tim has said. That this actually relates to the geographical configuration of this lot. And as, again, I'm just repeating what Tim said, but at a time when the Zoning ordinance was passed, the house was there, the lot was there. And Zoning allows for variances to deal with hardships. And sometimes I think this Board is liberal in determining what is a hardship. But there is no question in my mind that it is basic Zoning law that this is a hardship lot. So I would be strongly

inclined to grant a variance. Although, I respect the opinion by the other members of the Board, and I realize that we sometimes, among the overall considerations of whether to grant a variance, we consider open space and privacy as part of the matters that are part of the discretion of this Board. So I'd certainly be willing to hear additional comments from my colleagues. But I start from the point that I think that this is just the sort of situation where the open space FAR requirements where a Board should be willing to grant the variance, inclined to grant a variance unless there are other considerations that really would influence my discretion.

CONSTANTINE ALEXANDER: Well, I also agree with Tim. If you were seeking FAR relief, I would turn you down. I would vote against it because density is an issue here. But you do comply with

FAR. The setback is in my mind a technical violation. The affected parties are not the parties who have been here tonight. So I am predisposed. And I do think that this is one of the rare cases where the legal requirement for a hardship I think is clearly met. I must say I am concerned about that basement. I'm being very honest. It looks very suspicious. Sliding glass doors to an uninhabited basement, you know, I'm not born yesterday. And I don't know what we can do about that. I'm troubled by denying relief by the way the basement is designed. But I see problems down the road. And you know you have neighbors who are -- at least some neighbors who are not happy about what's going forward. I suggest to you that if you're planning to use this basement for inhabitable purposes, you're going to be looking for another problem. And if you come before



this Board again for that issue trying to get relief, I can tell you if I'm sitting here, you're not going to get relief from me. But that's to some extent a digression. Otherwise I would support your relief.

Ready for a vote or further comments?

DOUGLAS MYERS: Mr. Chairman, this is a little bit off -- just also a suggestion, a comment. It seems to me that there are steps that the applicant could take that would nullify the neighbors on some topics that may not bear on legal grounds of relief, but are obviously of great concern to the neighbors. And it's obviously a question for the applicant and his councilors to consider whether or not to take those steps. I would just offer my opinion for whatever it's worth, that I think that efforts to nullify the objections may bear

dividends in the long run in terms of good neighborly relations.

ATTORNEY JAMES RAFFERTY: Thank you. I agree.

CONSTANTINE ALEXANDER: Okay. We have two votes to be taken on this matter. One is the variance and the second is the Special Permit. We'll take those votes separately.

The Chair moves that a variance be granted to the petitioner to construct an addition to an existing single-family home. On the basis that a literal enforcement of the provisions of the Zoning ordinance would involve a substantial hardship to the petitioner. The hardship being that they would be left with a building, a non-conforming structure of substandard size in terms of really an effectively usable single-family home.

That the hardship is owing to

circumstances relating to the soil conditions, shape or topography of the land. Particularly the shape of the lot. This is a very odd shaped lot that creates setback issues almost -- they're unavoidable. And that a desirable relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the ordinance.

On the basis that the relief being sought is a setback issue that effects property of neighbors who have, namely, Harvard University that express no objection to the provision. That, yes, I have heard -- we have heard testimony about the impact on open space and the character of the neighborhood. The Chair would move that those issues do not -- are not directly related to the relief being sought. In other words, the result from the setback issue it results from the fact

that some construction will be done on this property.

And so the Chair further notes that for the most -- the directly affected abutters are either in support of the petition or have expressed no views. But that the variance be granted on the condition that the work proceed in accordance with plans submitted by the petitioner. These are plans prepared by Spacecraft Architecture. They're dated February 25, 2009. They're numbered A1, A2, A3, A4 and initialed by the Chair.

And on the further condition that the work be proceeded in accordance with the Certificate of Appropriateness granted by the Marsh Half Crown District.

Miss anything?

All those in favor of granting variance on the basis, so moved, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Heuer, Myers.)

CONSTANTINE ALEXANDER: Those opposed?

(Show of hand.)

CONSTANTINE ALEXANDER:  
Mr. Sullivan is opposed. The variance has been granted.

The second vote to be taken is whether to grant a Special Permit to allow the adding or alteration of certain windows and openings on non-conforming walls.

The Chair moves that the Special Permit be granted on the basis that the petitioner cannot satisfy the requirements of the ordinance otherwise, given the fact that this is a non-conforming structure.

That this location would not cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of adjacent uses would not be adversely affected by the relocation of the windows and door. And that no nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant or other proposed use.

And that the otherwise proposed new relocation would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of this ordinance.

The Special Permit would be granted on the condition that the work -- on the same conditions that with regard to the variance. Namely, that the work proceed in accordance with the plans submitted by the petitioner prepared by Spacecraft Architecture, dated February 25, 2009. Consisting of pages A1, A2, A3, and A4 and initialed by the Chair.

And on the further condition that

the work would proceed in accordance with the Certificate of Appropriateness granted by the Marsh Half Crown District.

All those in favor of granting the Special Permit on the basis, so moved, say "Aye".

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

CONSTANTINE ALEXANDER: Special Permit is granted.

ATTORNEY JAMES RAFFERTY: Thank you very much. Thank you for your time.

CONSTANTINE ALEXANDER: Thank you.

(Whereupon, a discussion was held off the record.)

(9:30)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer,

Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9772, 954 Cambridge Street.

Is there anyone here on that matter? Please come forward. And for the record as you probably have heard, please give your name and address.

DUCARMEL RATEAU: My name is Ducarmel Rateau.

CONSTANTINE ALEXANDER: You may have to spell it for our stenographer.

DUCARMEL RATEAU: D-u-c-a-r-m-e-l. R-a-t-e-a-u. I'm at 956 Cambridge Street, Cambridge, Unit 2.

CONSTANTINE ALEXANDER: Go ahead.

DUCARMEL RATEAU: I bought this building back in 1997, but I've been doing business in there since 1991. This building was residential. Prior -- the person who owned it before me, he changed it to commercial.



CONSTANTINE ALEXANDER: Is it all three floors commercial?

DUCARMEL RATEAU: All three floors were commercial before I -- when I moved in. When I bought the property.

CONSTANTINE ALEXANDER: Right.

DUCARMEL RATEAU: In '98 I changed the third floor and the second floor. I change it to residential so I have Certificate of Occupancy for both of them. I've been running my office out of the first floor, an insurance agency for the past 17 years. This year due to many changes in the insurance field where I lost my insurance carrier, I don't have an insurance carrier, I had to move my -- merge my office with a gentleman up the street from me. And, you know, I lost most of my booking business because of that. And I'm unable to pay -- unable to make payments on the mortgage as I want to and I need to change it to residential

because there's no market for commercial space either to rent or to lease it out. And, you know, since both floors already -- the top two floors are already residential, so I come here before you to request relief so I can change it because things are tough. I don't have an insurance carrier. I'm unable to keep my insurance office in there. And it's much easier --

CONSTANTINE ALEXANDER: I thought I saw something that this is condominiumized.

DUCARMEL RATEAU: Yes, I condoized it back in 2004.

CONSTANTINE ALEXANDER: So at this point you've sold off the two units, second and third?

DUCARMEL RATEAU: No, I sold the third floor. I kept -- i live in the on the second floor.

CONSTANTINE ALEXANDER: You live

on the second floor?

DUCARMEL RATEAU: Yes.

CONSTANTINE ALEXANDER: And then you're proposing to sell -- if we give you the relief, to sell the first floor?

DUCARMEL RATEAU: No. The first floor I'm going to --

CONSTANTINE ALEXANDER: Rent?

DUCARMEL RATEAU: Rent it to -- convert it to residential. I mean, I'm planning to either move in and then rent the second floor or rent it out. I don't know yet which way I'm going to do it, but I'm planning to rent it out or either to sell it.

CONSTANTINE ALEXANDER: For the record, you know, this building's located in a business district. The residential is permitted as a matter of right. So you don't need any variance from us with respect to a residential use in a business district. So that's fine. And that's

good. And that's not before us.

But when we, under our Zoning By-Law, if someone wants to -- you have a right to convert, in this case commercial to residential, you need to meet four conditions. It's in Section 5.26. And I think you're here before us because you don't mean some of all four.

DUCARMEL RATEAU: Yes.

CONSTANTINE ALEXANDER: I just want to go through them to make sure I understand.

One of the requirements is that you meet the minimum lot area for each dwelling unit. And according to your dimensional form, you do that. So you meet that requirement.

You're supposed to meet the FAR requirements. And it looks like you would not meet the FAR requirements, at least in your dimensional form it indicated no answer to that. That's one piece of

relief.

Usable open space is not going to be affected, so you're okay there.

And the other question is off-street parking. You have to have three off-street parking places and you don't have that right now.

DUCARMEL RATEAU: I don't have any off-street parking. Although the people on the third floor they don't have a car. And they -- there's a building next-door to us, the Ven-phen building, they allow us to park in their parking lot.

CONSTANTINE ALEXANDER: And also you're on a main street with public transportation. So the need for parking is not as dramatic as if you were on Brattle Street for instance.

DUCARMEL RATEAU: That is correct.

TAD HEUER: You have a bus stop right outside the --

DUCARMEL RATEAU: Yes.

CONSTANTINE ALEXANDER: So that that certainly ameliorates the need for parking, in my opinion anyway.

DUCARMEL RATEAU: Right. Plus Windsor Street is right next-door. Right next to it. And Windsor Street is residential parking right in that area.

TIM HUGHES: And there's a public parking lot that comes directly off of Windsor Street.

CONSTANTINE ALEXANDER: Questions from members of the Board at this point?

(No response.)

CONSTANTINE ALEXANDER: Anyone in the audience wish to be heard on this petition?

(No response.)

CONSTANTINE ALEXANDER: No one so indicates.

The last I knew there were no letters in the file. So, that's it.

Comments from members of the Board?

BRENDAN SULLIVAN: No.

DOUGLAS MYERS: What about the abutters?

CONSTANTINE ALEXANDER: There's been no comment.

Have you talked to the abutters about this of any sort? Have you notified anybody that you plan to do this?

DUCARMEL RATEAU: Well, I have the sign right in front.

CONSTANTINE ALEXANDER: You have the sign. But other than that.

DUCARMEL RATEAU: No.

CONSTANTINE ALEXANDER: And no one has contacted you and said what's going on here? Or, I don't like the idea of a residential unit?

DUCARMEL RATEAU: No, no one.

TAD HEUER: This appears to have been a residential building originally?

DUCARMEL RATEAU: Yes. It was residential. All three-deckers went

residential, so it's been my wish to change it back.

CONSTANTINE ALEXANDER: Ready for a vote?

The Chair moves to grant a variance to the petitioner to allow the conversion of an existing first floor commercial space into a residential use.

The basis of the variance being that a literal enforcement of the Zoning ordinance would involve a substantial hardship to the petitioner. The hardship being that he would be forced to have basically a residential building, continued commercial space for which there is no demand for.

That the hardship is owing to circumstances especially affecting the structure but not affecting the district generally. That hardship is in fact the case because you have, again, an odd situation where you have a building that



was originally built as a residential structure, along the way got converted to commercial, it's now you want to restore it to its original purpose. That certainly is special to your property. Most other efforts that are used for residential purposes are residential.

And that the relief can be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purposes of the ordinance.

That can be satisfied on the basis that the use is permitted as a matter of right in the district.

That the -- the failure to comply with parking requirements is not dramatic in your situation because you are located on a public way with adequate public parking in the general vicinity, and that otherwise is going to allow in addition to the housing stock in the City of Cambridge

and certainly avoid a vacant space at street level which would adversely affect the neighborhood.

On that basis I would move that a variance be granted to the petitioner.

All those in favor, please say,  
"Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

CONSTANTINE ALEXANDER: Good luck.

DUCARMEL RATEAU: Thank you, sir.  
Thank you.

(Whereupon, a discussion was  
held off the record.)

(9:40)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9773, 50 Church Street slash 60 Church Street.

Is anyone here wishing to be heard on that matter?

For the record, please state your name and address.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board, James Rafferty on behalf of the applicant 50 Church Street Realty Trust.

Just give them your name.

JOHNNY DiGIOVANNI: Johnny DiGiovanni, realty properties at 50 Church Street.

ATTORNEY JAMES RAFFERTY: Spell DiGiovanni.

JOHNNY DiGIOVANNI:  
D-i-G-i-o-v-a-n-n-i.

TED GALLANTE: Ted Gallante from Gallante Architecture Studio.

CONSTANTINE ALEXANDER: Before you start, Mr. Rafferty, just for the record, this is a, if you will, a follow on to an earlier -- not technically so -- to an earlier petition before us with regard to this property where we granted you -- granted your client a variance to enclose a patio on the lower level to build an addition on -- at the entry level and to expand the Mezzanine area and all with regard to reduced parking of six spaces. So that was approved. And now you're

looking to basically modify what we've granted?

ATTORNEY JAMES RAFFERTY: In a manner of speaking. The variance that we achieved previously, most of the GFA in that involved the creation of this new entry coming off a previously what had been an alleyway. And that program was, is unchanged. And it allowed for some additional space within the building. The dominant feature here is an atrium space that Mr. DiGiovanni hopes to find a restaurant tenant for. It was discussed in the hearing when we were here last that one of the things they're considering, and right now it is a four-story volume I believe.

JOHNNY DiGIOVANNI: Yes.

ATTORNEY JAMES RAFFERTY: That because of heating and cooling issues they might consider putting a roof over this area. And this is not new area with a

modest exception. Most of this restaurant's space has been there for years. But there have been a -- there have not been a lot of successful restaurants there. One of the issues is trying to control the environment. So Mr. DiGiovanni sought a building permit to construct the relief that was provided him. And an interesting issue came up, and that is in his building permit he in fact designed a roof style structure at above the second floor. So it essentially it cut the volume in half. It led to a conversation within the Building Department ISD is when does the area on top of a roof become a floor? So, and you'll see in the section here what's proposed is -- was to create this roof (indicating), and this roof in the space that has existed. The Building Department started to look at it and say well, the area on top of that roof is creating area

that could be walked on. And the original thinking was well, I wouldn't, it would just be a roof. And then we started to think, well, that's probably unattractive. And maybe what we should do then, because we're now, by putting this roof on we're -- there's a GFA implication, we should model it and show what it could be. Not occupiable space. Not space that would lead to any intensity of the use of the building. But by virtue of the roof creating some opportunity for an atrium style area for which this is a concept plan now that Mr. Gallante has designed. He has some plantings and -- there. But there are a couple of iterations of this because it's not yet decided what that would be.

So it was an effort to try to achieve the roof concept that had been discussed at the prior hearing. And the conclusion was well, you know, we're

really going to find ourselves in a real struggle here whether it's GFA or if it isn't. Is it a floor? Is it a roof? Maybe the thing to do is simply identify it as space, not seek to build any office -- this whole area is permitted to office building -- not seek to create office space within it. So it wouldn't be leasable, if you will. It wouldn't be something that could be built out at a later point in time, and we expect there might be language to that effect if the Board deemed it appropriate. But it really would allow for the top of the roof to provide a function and amenity for the occupants of the building. And that --

BRENDAN SULLIVAN: Basically to take the tower effect away; is that correct, by putting this roof in?

ATTORNEY JAMES RAFFERTY: That's correct. So the volume, exactly.

BRENDAN SULLIVAN: A clear story



it becomes problematical.

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: It doesn't function well.

JOHNNY DiGIOVANNI: Yes, yes, that's right.

BRENDAN SULLIVAN: For all the right reasons. Yes, okay.

JOHNNY DiGIOVANNI: That's correct. One of the --

BRENDAN SULLIVAN: Its form has a purpose and also can be aesthetically pleasing.

JOHNNY DiGIOVANNI: Yes.

CONSTANTINE ALEXANDER: Couldn't have said it better yourself.

JOHNNY DiGIOVANNI: There you go.

ATTORNEY JAMES RAFFERTY: He may be the old, but every once in a while I tell you -- so that's exactly correct. It's -- in trying to make it as much of a roof as possible, we felt we were almost

doing a disservice and then there became this issue of what do you call the area now in this whole volume space. And I should note, the one thing we want to point out, we advertised a GFA variance. As a result of a recent case involving courtyards and space, there is a portion here that is less than 40 feet.

JOHNNY DiGIOVANNI: Yes.

ATTORNEY JAMES RAFFERTY: And which under the definition of GFA should be included, so the dimensional form I think is shy by a few hundred feet because we did not include this area. But in a recent review with Mr. O'Grady about how this atrium space -- so the GFA proposed here, the additional GFA, which this here even though this is not going to be the roof, this is not going to be part of the roof, but because it's less than 40 feet, it's going to be treated as though there were a roof there. You need to go to the

definition of gross floor area under Article 2 and find this really interesting comment about an interior courtyard if it's covered or uncovered and less than 40 feet in width, it gets treated as though the floor were there. Right?

So, this area, so while this plan has not changed, we now amended -- I'm doing it as I speak, we had submitted a 2850 because I had not included that area. That area now in the dashed lines here totals 3300 square feet. There is no floor there but it is less than 40 feet.

CONSTANTINE ALEXANDER: But, you said the case is properly advertised. You weren't --

ATTORNEY JAMES RAFFERTY: Oh, yes, it's advertised.

CONSTANTINE ALEXANDER: Okay. You're pointing out a dimensional form is not exactly correct now that you've --

ATTORNEY JAMES RAFFERTY: Based

about this 40 foot -- distances of less than 40 feet within an area do get included as GFA.

CONSTANTINE ALEXANDER: You still have an FAR issue. It's worst than represented, but not dramatically. Your form shows that your FAR right now is 4.05 and you were going to go -- and you want to go to 4.23, and the district only allows 4.0.

ATTORNEY JAMES RAFFERTY: Right. We don't say worse. Slightly higher would be the legal description.

CONSTANTINE ALEXANDER: That's a better word.

I have no questions. I think Mr. Heuer has a question or a comment.

TAD HEUER: I do.

So what level is the roof coming in at against the current buildings? I just wasn't -- I saw the cross section.

TED GALLANTE: So the third floor

on one side and the fourth floor on the other is the -- the building -- one is a five-story building and one's a four-story building.

JOHNNY DiGIOVANNI: And these are office levels that look down onto that space. That's an office level as well and we're trying to get light into that office.

TAD HEUER: Okay. And then the roof is right, right on the --

JOHNNY DiGIOVANNI: Right. And this is the top of the atrium.

TAD HEUER: Yes.

JOHNNY DiGIOVANNI: Yes. And this is the roof.

TAD HEUER: Okay.

JOHNNY DiGIOVANNI: This dark line.

TAD HEUER: Got it.

JOHNNY DiGIOVANNI: Or floor.

TIM HUGHES: One man ceiling.

TAD HEUER: So, I appreciate what you're doing and I'm generally in favor of it to make the building more aesthetic and the space more aesthetic. My question actually is related to other things that are attached to the top of this building. Vis-a-vis this large triangular super structure that's been there for quite sometime. I mean, I'm worried about adding more things on upper levels to that building. I'd almost be more inclined to grant this relief if this were more superfluous were removed to make the roof lines more harmonious with this addition. Could you just explain what this is and why it's there?

JOHNNY DiGIOVANNI: Sure, absolutely. And in 1980 this was the first privately financed solar system put in a building in Massachusetts, and it never worked. So in 1980 that -- we had all solar panels on the side that of

building. Inside of that is of course the mechanical equipment.

TAD HEUER: Right.

JOHNNY DiGIOVANNI: Now, there aren't mechanicals at the very top of that, right? And in fact some portion of that was now taken outside of it as systems change, and I'm not able to tell you why that happened. But I can tell you there was a time on the slope portion there were all solar panels on that.

TAD HEUER: Right.

Is there any desire to return it to sole arrest panel use?

JOHNNY DiGIOVANNI: We couldn't do it physically in the building the way it was set-up. As I understand it, this is all third or fourth or fifth hand, this is 1980.

TAD HEUER: All right.

JOHNNY DiGIOVANNI: The area where they had the system was too far away from

the solar panels was one of the -- it literally never worked in the buildings.

TAD HEUER: This is a surplus super structure currently on the roof?

JOHNNY DiGIOVANNI: I think the shape of it is, but there's a lot of mechanical equipment inside that needs to be inside the penthouse.

TAD HEUER: Right.

JOHNNY DiGIOVANNI: Now the height of it I suspect probably doesn't need to be that shape. I will say this is not visible from anywhere.

ATTORNEY JAMES RAFFERTY: This won't be seen.

JOHNNY DiGIOVANNI: You can't see this from the public way.

ATTORNEY JAMES RAFFERTY: This roof.

TAD HEUER: Right. Okay.

JOHNNY DiGIOVANNI: Okay. But I understand your question and it's a fair



point.

CONSTANTINE ALEXANDER: Has there been any thought given to redoing that so that you don't have the excess space that is not aesthetically pleasing?

JOHNNY DiGIOVANNI: Sure.

TAD HEUER: I'm thinking about what we used to do with many of our, for example, of telecom provisions where we say if the system is no longer used, it will be removed. I'm not sure that ever made it into a --

JOHNNY DiGIOVANNI: Well, it is being used but I think you're right. I mean, there is a certain height it would need to be, but I am sure at the very top of it there's nothing in there. It was just for the panels.

BRENDAN SULLIVAN: And he was in van guard of that technology at the time.

JOHNNY DiGIOVANNI: In fact, folks were saying -- there's an article in the

Boston Globe -- The Boston Magazine, I still have it, that they thought it was going to be a billboard on the top of the building. When in fact it was about as a Cambridge a thing you can possibly do in 1980.

So, but to answer your question, I haven't given it a lot of thought. We can look at that. I'm sure the very tip of that doesn't have anything in that, that much I know.

TAD HEUER: Right.

JOHNNY DiGIOVANNI: But I can tell you there are big fans and big HVAC equipment in there and stuff along the walls and all that sort of thing. And it's a steel structure.

TAD HEUER: Right.

JOHNNY DiGIOVANNI: And there are steel, it's just not --

TAD HEUER: Just in terms of looking at because we're all talking about

the same building.

JOHNNY DiGIOVANNI: It's a fair point. No, absolutely from a visibility perspective you can see that from various parts of the square and it's not attractive. I agree with you.

TAD HEUER: Any thought you may have to reducing that, particularly if you're going to be up on that level doing work and creating an atrium would be welcome at least from this member's point of view.

JOHNNY DiGIOVANNI: Absolutely. We're actually not doing work up on there, but absolutely. Okay? Absolutely.

CONSTANTINE ALEXANDER: Am I correct, Mr. Rafferty, you have a Certificate of Appropriateness from the Harvard Square Conservation District?

ATTORNEY JAMES RAFFERTY: We do. And they determined for the exterior work, and they determined that this was not

within purview because this is totally interior. There's a jurisdictional statement that we provided when we filed, yes. They passed on the entry that you people voted on in the prior case. That was really -- and the changes to the exterior of the building. But they -- there's no -- nothing visible -- no change in the alteration of the public features of the building.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TIM HUGHES: No.

CONSTANTINE ALEXANDER: Is there anyone in the audience who wishes to be heard on this petition?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard.

I don't think there's any correspondence in the file on this. So, I'll close public testimony.

Comments from members of the Board?

Further questions?

BRENDAN SULLIVAN: All set.

CONSTANTINE ALEXANDER: All set?

Doug?

DOUGLAS MYERS: I just want to say I'm in favor of the concept and the approval, but I do think it's important that we be clear in our approval what we are approving and what we're not approving. I would accept Mr. Rafferty's invitation to --

CONSTANTINE ALEXANDER: I agree with you.

DOUGLAS MYERS: -- to limit the approval and make it clear that it's not subject to interpretation. Insofar as we can say so now, about what space or use is and what -- and how it's to be characterized in the future.

CONSTANTINE ALEXANDER: I had the very intention when making the motion of

doing that. I would stop and ask people if I get it right, but I agree with you.

DOUGLAS MYERS: This would probably be a subject of agreement to the petitioner.

ATTORNEY JAMES RAFFERTY: We were struggling with Mr. Gallante -- pardon me. For the right architectural characterization of what was being created. I think the conclusion was that this is, this is an atrium and that therefore by its definition that it couldn't be used for later build-out for separate offices or whatever. But the only flexibility we were asking, because they simply aren't that far along is how, where chairs might go, where path and all that. But it would be treated like any other atrium in buildings.

CONSTANTINE ALEXANDER: But you are willing to proceed if granted relief subject to compliance with these plans?

ATTORNEY JAMES RAFFERTY: Oh, yes.

CONSTANTINE ALEXANDER: And these elevations, too.

ATTORNEY JAMES RAFFERTY: Oh, yes, absolutely. It's just that the actual -- so it's all square footage. It's all included. We have a couple of other --

CONSTANTINE ALEXANDER: If you're going to move the desk chairs in the atrium, I don't think we're going to be concerned by that.

TED GALLANTE: Can we just confirm that?

CONSTANTINE ALEXANDER: Yes, I want you to be sure. Otherwise, you'll be back before us some other night.

JOHNNY DiGIOVANNI: And so the question is whether the layout of this path area could change.

CONSTANTINE ALEXANDER: That's not zoning it seems to me.

JOHNNY DiGIOVANNI: Fine. And I

understand your point about, you know, use. And not being office space.

ATTORNEY JAMES RAFFERTY: So this submission actually shows multiple iterations of what this might look like.

CONSTANTINE ALEXANDER: I understand. Ready for a vote?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: The Chair moves that a variance be granted to the petitioner to proceed with the work proposed on the condition that a literal enforcement of the provision of the ordinance would involve a substantial hardship to the petitioner.

It would result in a going forward with a project that we previously approved in a way that would not be aesthetically pleasing and detrimental -- undermine the prior relief that we had granted.

That the hardship arises from the unusual structure of the -- unusual shape



of the structure, including the slope of the property. All of the same reasons that we granted a variance the last time.

And that there be no, again, no substantial detriment to the public good or no derogation from the intent or purpose of the ordinance.

What I meant to say, I didn't say it very well, we think all of these conditions for a variance would be met for the very same reasons that we granted the variance in the previous case, and those very reasons will be incorporated into this decision in terms of the basis for the granting of the variance.

The variance will be granted subject to the condition that the work proceed in accordance with the plans submitted by the petitioner. Two sets of plans. They're initialed by the Chair. One set prepared by the Gallante Architecture Studio. And they are pages A.1 through A.6. And the

other are just a series of elevations. They have no other defining feature other than my initial.

And on the further condition that the work that with respect to the relief being granted, that it is a -- the purpose of creating an atrium and that the property is not be to be modified or used for offices, retail use or any other type of use other than the atrium use unless you come back before our Board and seek further relief for a modification of the variance.

All those in favor, please say,  
"Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

ATTORNEY JAMES RAFFERTY: Thank you. May I be permitted just to make a

notation on the dimensional form with the new numbers?

CONSTANTINE ALEXANDER: Yes. I wanted to put those as part of the conditions.

I can go back to it. Also, on the further condition that the dimensional form be amended to reflect more a accurate description of the FAR issue.

ATTORNEY JAMES RAFFERTY: Of 3300 square feet, the entire area.

TED GALLANTE: It's on the drawings. The drawings that you cited.

CONSTANTINE ALEXANDER: Do it on the form as well.

JOHNNY DiGIOVANNI: Okay.

SEAN O'GRADY: Gus, I want to make sure the Board is not making any restrictions on the layout of that atrium.

CONSTANTINE ALEXANDER: That's right. That's correct.

SEAN O'GRADY: It's the use,

whatever they want to do.

ATTORNEY JAMES RAFFERTY: Benches, chairs.

SEAN O'GRADY: Remind me when the time comes.

CONSTANTINE ALEXANDER: Make sure all the benches are exactly where they are on these plans.

(Whereupon, a discussion was held off the record.)

(10:00)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9774, 19 Sargent Street.

Anyone here wishes to be heard in

this case? And yes there is. Please gave your name and address for the record.

DENEEN CROSBY: Deneen Crosby, 19 Sargent Street.

CONSTANTINE ALEXANDER: Can you briefly explain -- I take it you want to add a dormer to your attic bedroom?

DENEEN CROSBY: That's right. It's my son's bedroom, and he has limited head space. And he has been there since he was a toddler and he's now 14 and a half and six foot tall.

CONSTANTINE ALEXANDER: We have to find a hardship to grant you the variance. And the hardship is the genes of your son?

DENEEN CROSBY: Genes, that's right.

CONSTANTINE ALEXANDER: Okay. And that's 32 feet is that what I recall?

DENEEN CROSBY: Right.

CONSTANTINE ALEXANDER: Increase the floor area with greater than five feet

in height by 32 square feet. And the plans for this are in the file?

DENEEN CROSBY: Yes.

CONSTANTINE ALEXANDER: While I'm fumbling about, any members have any questions? Comments?

TAD HEUER: So the relief is for both FAR and setback?

DENEEN CROSBY: FAR.

CONSTANTINE ALEXANDER: Just FAR.

TAD HEUER: No setback?

CONSTANTINE ALEXANDER: No. The FAR issue is, right now they're at .4978 in a .5 district. So they're in compliance. By adding 32 feet you're going to go .5042. Slightly in excess. That's the reason you're here before us tonight for that slight increase in FAR.

TAD HEUER: And that Special Permit that would otherwise be required for the skylight is being folded into the variance; is that correct?

DENEEN CROSBY: The skylight is there. There is a skylight in the roof now, and so when the shed -- when the dormer is built it's going to be reinstalled.

CONSTANTINE ALEXANDER: I wasn't aware that we had an issue before us tonight regarding the skylight.

SEAN O'GRADY: I saw nothing about the skylight. I mean, I would consider a skylight in a dormer that was granted to be part of the dormer grant then not to need any further relief in the same way that we would treat a window in a dormer.

TAD HEUER: Even though there's no relocation? Despite the fact that there is relocation?

SEAN O'GRADY: Well, no, I'm saying, if I understand it correctly, there is a -- you're being asked to grant a dormer, and on the roof of that granted dormer there is also a skylight. We would

treat that --

TAD HEUER: A new sky light?

DENEEN CROSBY: There is a skylight in the roof now.

TAD HEUER: That's my question.

SEAN O'GRADY: Okay. So as you pop that roof up, you're just sort of keeping that skylight in the same place?

DENEEN CROSBY: That's correct.

SEAN O'GRADY: Well, I guess I would treat this as I would treat any window in the dormer. It's part of it.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Any further questions from members of the Board?

Is there anyone here who wishes to be heard in regard to this petition?

(No response.)

CONSTANTINE ALEXANDER: No one indicates they wish to be heard. There actually are the letters in the file with



regard to this matter. I think. There are two letters. They seem to be identical. Yes, they are. One from Joe Comerford C-o-m-e-r-f-o-r-d. It doesn't give an -- I am the owner of 18/20 Sargent Street and live across the street from the proposed project. Deneen Crosby has shown me her plans to add a dormer to her son's third floor bedroom which I will see from my house. I'm writing in support of this project at 19 Sargent Street.

The other letter is from Bridget Harkin H-a-r-k-i-n. I am the owner of 21/23 Sargent Street and next-door neighbor to the proposed project. Deneen Crosby has shown me her plans to add a dormer to her son's third floor bedroom which is adjacent to our house. I am writing in support of this project at 19 Sargent Street.

And that seems to be it. Comments from members of the Board?

TIM HUGHES: We're good with it.

CONSTANTINE ALEXANDER: Ready to vote?

The chair moves that a variance be granted to the petitioner to allow her to proceed to construct -- to add a dormer to an attic bedroom at her structure at 19 Sargent Street. The variance will be granted on the basis that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. The hardship being that this bedroom that would be affected by the dormer is at this point not necessarily inhabitable by people of all different heights and therefore is not a fully functioning bedroom.

And that the hardship is owing to circumstances involving the structure. This structure has no choice but to if you want to add additional living space on the third floor, you have to add to the

dormer.

That substantial relief, desirable relief can be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the ordinance. That we believe that to be so because the relief being sought results in a very slight violation of the requirements of the ordinance.

That this relief is being supported by the abutters most directly affected by what is proposed.

That dormers of this size, and location are not unusual to the neighborhood.

And on that basis the Chair would move to grant the variance, and such variance be granted on the condition that the work proceed in accordance with plans submitted by the petitioner. There are two pages. One is a plot plan. It's

actually one page prepared by S.A. Colloro Construction (phonetic) in Tewksbury, Massachusetts, dated March 8, 2009 and initial by the Chair.

All those in favor of granting the variance on the basis proposed, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(10:05)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9775, Four Forest Street.

Is there anyone here wishing to be heard on this case?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes there is no one but there is a letter in the file from David A. Kinsella. The President of -- looks like TBC Architecture and the petitioner in this matter. The letter is addressed to the Board, dated April 29th. It's actually addressed to Mr. O'Grady. Please continue

our hearing scheduled for April 30, 2009 to the next available Board hearing. I will reissue the application for relief so your Board can look at the whole application at one hearing. Signed David Kinsella.

Question. Is he looking to continue the case or is he -- I thought he was going to re-advertise?

SEAN O'GRADY: Yes. What happens is he -- in his description described a roof deck. It wasn't until I dug in the case after the fact that I found out that there were dormers in there. So he's not advertised correctly. So the maneuver is to continue this case off into the future ultimately to be withdrawn for the sole purpose of avoiding repetitive petition so that he can put a complete petition together.

CONSTANTINE ALEXANDER: So basically when we hear this case again

we're not going to hear the continued case, we're going to hear the new case, the advertised?

SEAN O'GRADY: Precisely.

CONSTANTINE ALEXANDER: What would you recommend we continue this case?

SEAN O'GRADY: Well, regardless of the petitioner's suggestion that we do it at the next available, I say we want to push this out as far as we can just so that we can get the real case in front of us.

CONSTANTINE ALEXANDER: We don't have a waiver, do we?

SEAN O'GRADY: Well, that's a good point.

CONSTANTINE ALEXANDER: That's our usual issue. What if we don't get a waiver?

SEAN O'GRADY: Maybe we should do the count then. 65 days from the date of --

TAD HEUER: 6/28 is the required date.

SEAN O'GRADY: We have to have a hearing by 6/28?

CONSTANTINE ALEXANDER: That's what it says.

TAD HEUER: No, no, no, we need a decision by 6/28.

CONSTANTINE ALEXANDER: Decision. Maria or maybe you put it on the bottom of the file. Decision date 6/28/09.

SEAN O'GRADY: Let me take a quick look at that.

CONSTANTINE ALEXANDER: Sure.

SEAN O'GRADY: So the hearing has to occur by May 24th.

TAD HEUER: We can have a nominal continuance to the next date, right?

SEAN O'GRADY: We should put it on the 14th.

CONSTANTINE ALEXANDER: 14th of May.



SEAN O'GRADY: May 14th.

CONSTANTINE ALEXANDER: And put a May 14th. I think you tell Mr. Kinsella that he can give you a waiver and an answer to that, and if not, we're going hear the case on its merits and act accordingly.

BRENDAN SULLIVAN: And get a request on the 14th to continue it again.

SEAN O'GRADY: Exactly.

CONSTANTINE ALEXANDER: So we should move to continue --

SEAN O'GRADY: 5/14.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until May 14th on the condition that the petitioner sign a waiver of notice -- a waiver of the time to render a decision. And on the further condition that the sign be modified -- as advertised in the matter to be modified to reflect the new date and new time. To be continued to at seven

o'clock p.m. on May 14th.

All those in favor, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. The case is going to be continued.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

(Whereupon, a discussion was held off the record.)

(10:10)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9776, 154 Chilton Street. Is there anyone here wishes to be heard on that matter?

Could you please give your name and

address for the record, please.

JENNIFER KAPLAND: Sure. Jennifer Kapland, 154 Chilton Street.

CAROLYN STACK: Carolyn Stack, 154 Chilton.

CHAD BROWN: Chad Brown, 700 Mass. Ave., Cambridge.

CONSTANTINE ALEXANDER: And you're the architect on the project?

CHAD BROWN: I'm the architect on the project.

CONSTANTINE ALEXANDER: You say you want to --

TAD HEUER: You want to totally redesign whatever is right there.

CHAD BROWN: Pretty much.

CONSTANTINE ALEXANDER: You actually want a Special Permit, not a variance, to add a second floor bedroom, bath and walk-in closet.

CHAD BROWN: That's right. A little background. A single-family house,

it's going to remain a single-family house. The lot's non-conforming and the structure is also non-conforming. What we want to do here is basically trade some floor area from the basement, which has ceiling height over seven feet, but it's basement space, to make the second floor addition. And with a little bit of help from Sean about how to do this, it's a two-step process. So step one we're in-filling a portion of the basement or otherwise getting rid of square footage. One portion is underneath the stair landing so it wouldn't be considered part of the gross floor area, and trading that for or calculating 25 percent of the resulting, taking that square footage and using it to make the second floor issue. And otherwise other than that, the addition conforms with the zoning code the dimensional requirements. We've held back this one side yard, the seven foot, six

setback all the way. Other than that, it's -- that's the project.

TAD HEUER: So you're bringing the right side setback into conformance? Where it was not previously.

CHAD BROWN: Where we're doing work, yes.

CONSTANTINE ALEXANDER: And it's a Special Permit because you're increasing the non-conformance by less than 25 percent.

CHAD BROWN: At 25 percent.

CONSTANTINE ALEXANDER: So it's lesser standard you have to meet which is a Special Permit.

BRENDAN SULLIVAN: Can I see the drawings, Gus?

CONSTANTINE ALEXANDER: While Mr. Sullivan is looking at the drawings, questions from other members of the Board at this point?

DOUGLAS MYERS: No.

CONSTANTINE ALEXANDER: Tad?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Is there anyone here in the audience who wishes to be heard on this petition?

(No response.)

CONSTANTINE ALEXANDER: No one so indicated.

I'll give Mr. Sullivan time to look at the plans.

I take it -- while he's doing that, I take it- there's nothing in the file from neighbors or abutters. Have you spoken with any of your neighbors or abutters?

JENNIFER KAPLAND: One of my neighbors who lived next door said that he was in support of it. He offered to come here but he has two young children, and goes full time to school and work so I said he didn't have to come.

CONSTANTINE ALEXANDER: No one is

opposed. You haven't heard any objections from neighbors?

JENNIFER KAPLAND: The neighbor on the other side is in support of it as well.

BRENDAN SULLIVAN: The neighbor on the right will be coming down doing the same thing after you get yours.

CONSTANTINE ALEXANDER: Comments from members of the Board? We have no questions. Any comments? No? Ready for a vote?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: The Chair moves that a Special Permit be granted to the petitioner to allow the addition of a second floor bedroom, bath and walk-in closet.

A Special Permit will be granted on the basis that you can -- given the non-conformance of the structure now you cannot meet the requirements of the

ordinance.

What you proposed to do will not cause congestion, hazard or substantial change in the established neighborhood character.

That what you're proposing to do would not affect adjacent uses or adversely affect them.

That no nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant or the citizens of the city. And that what you are proposing to do would not impair the integrity of the district or adjoining district or otherwise derogate the intent or purpose of this ordinance.

What you're proposing to go do is essentially to take a single-family structure and make a more liveable single-family structure. And this Special Permit will be granted on the condition that -- and I want to make this clear to



you, sir. These are the plans. If we grant this relief, the vote that I'm about to make or the motion that I'm about to make is granted, this is it, no changes.

CHAD BROWN: We understand that.

CONSTANTINE ALEXANDER: Okay.

On the condition that the work proceed in accordance with the plans submitted by the petitioner prepared by Brown Fenlosa (phonetic) Architects, Inc. I don't see a date on here. But anyway, it's initialed. The first page of which has been initialed by the Chair.

All those in favor of granting relief is so moved, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

CONSTANTINE ALEXANDER: Motion granted. Thank you very much.

(Whereupon, a discussion was  
held off the record.)

(10:20)

(Sitting members: Constantine Alexander,

Tim Hughes, Brendan Sullivan, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9777, 1923-1925 Mass. Avenue.

Is there anyone here wishing to be heard on this?

PETER COOK: Yes, sir.

CONSTANTINE ALEXANDER: As you've probably heard, give your name and address, please.

PETER COOK: Surely. Peter Cook. I'm with Omnipoint Communications, 15 Commerce Way in Norton, Massachusetts.

We're before you on behalf of Omnipoint. Omnipoint does business as T-Mobile. We've been here -- we've been here many times before I'm sure. This site is an existing site, that actually one of the first sites in our network built in 1997 time frame. We're here regarding modification that was previously

reviewed with Planning Board in March.

Essentially two changes. One, is we are relocating one of the existing antennas that is facade mounted on the rear of the building, bringing that up and mounting that to an existing chimney that's recessed back from the rear roof edge. And then we are proposing to add a new antenna to an existing handrail that's in place there adjacent to equipment cabinets. We've provided to the Board previously some photo simulations hopefully. If not, I have them.

CONSTANTINE ALEXANDER: We have them in the file.

PETER COOK: I have some extras here.

CONSTANTINE ALEXANDER: These are the plans. And these photo simulations, we're going to hold you to these in terms of the impact --

PETER COOK: Yep, absolutely.

Yep.

CONSTANTINE ALEXANDER: You're comfortable with them, they're accurate?

PETER COOK: Yes, these were actually prepared by the engineer that did the drawings. So there is, it's not a heart that's rendering so to speak.

CONSTANTINE ALEXANDER: One of the things we had -- this is a Special Permit case as well, and usually we get this, but I didn't see it in the file. We need to have some proof that you're appropriately licensed from the state or federal agencies having jurisdiction over the matter.

PETER COOK: Well, we're modifying an existing site. We certainly have an FCC license. I can provide that.

CONSTANTINE ALEXANDER: I just want you to confirm it for the record.

PETER COOK: Absolutely.  
Omnipoint is licensed to provide wireless

services in this market.

CONSTANTINE ALEXANDER: In terms of the impact, visual impact, are you going to -- are they going -- the new antenna and the relocated antenna, are they going to be the same appearance as the as what's there now?

PETER COOK: Yes, they are. There will be similar panel style antennas. The one to the rear will be painted to match the chimney that it's being mounted to. The one in the front is shown as an off-white only because the stuff that's up there is an off-white, but the Board's probably well aware if there is other color considerations, they can be anything they want them to be. We did go to see the Planning Board. I think they were frankly more concerned about the billboard and that impact than us.

CONSTANTINE ALEXANDER: They were.

PETER COOK: But we certainly have

some flexibility. We have tried to be, you know, this really is a site that has been in the network for a while, and we're really trying to, as you can imagine, we're not really adding additional coverage that you're familiar with, we're trying to maximize the capacity that we can get out of this site but for obviously we need to add to that.

CONSTANTINE ALEXANDER: So just elaborate a little bit on that. You're going to increase the capacity?

PETER COOK: Yeah, essentially the way cell site works as you probably know, you have the cabinets and you have the radios in them, and you've got the antennas that connect back to the radios. Each antenna has a certain amount of channels it can handle. A certain number of calls that go with the channel that you're able to add antennas or add more efficient antennas. Antennas over the

last ten years ago have gotten more efficient. But this actually allows us to improve that coverage. You've got a lot -- very heavy call volume as you can imagine in the Porter Square area. And this will allow us to add capacity in terms of being able to handle more calls rather than having to add to more sites.

TAD HEUER: Can you just point out where the relocated panels are being relocated from?

PETER COOK: It's tough to see in the photo just because it is facade mounted to that rear wall. If you look at the -- this plan here. Right here in the back there's a facade mount (indicating).

TAD HEUER: So this is Mass. Ave. here?

PETER COOK: On the side. And we're taking this antenna, moving it up and bringing it up on the chimney. So if you go to photo No. 3 I believe --



TAD HEUER: The only reason I ask, there were three arrows here for existing.

PETER COOK: Those three are staying, because those three are at this corner.

TAD HEUER: They're facing north?

PETER COOK: Yeah, they're facing -- and the one that's the side mount on the back, on this facade. It just doesn't pick up on the --

TAD HEUER: So it's just being moved higher in the same plane?

PETER COOK: Yes, yep.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

Anyone in the audience here who wishes to comment on this?

(No response.)

CONSTANTINE ALEXANDER: Last chance? No?

There is a letter in the file from

the Planning Board addressed to us regarding the petition. The Planning Board reviewed the Special Permit application by Omnipoint to add an antenna to the rooftop railing and to relocate the existing antenna on the chimney. The Planning Board stated that the billboard eclipsed the installation in size and scale and has no objection to this antenna installation upgrade. So it's a comment more on the billboard than on your antenna.

PETER COOK: Yes.

CONSTANTINE ALEXANDER: Comments?  
Ready for a vote?

DOUGLAS MYERS: Compared by  
comparison.

PETER COOK: Not too many times we  
can do that in our industry.

CONSTANTINE ALEXANDER: The Chair  
moves that a Special Permit be granted to  
the petitioner to allow it to relocate one

existing antenna on the rooftop of the existing chimney, and to add one new antenna to the existing platform safety railing.

Such Special Permit be granted on the basis you cannot meet the requirements of the ordinance. In fact, the ordinance requires that you get a Special Permit for work of this sort.

That there are no impact -- there is no -- the work being proposed would not cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of adjacent uses would not be affected by these antenna. That no nuisance or hazard created to the detriment of the health, safety or welfare of the occupants or of the citizens of the city.

And that the proposed use would not impair the integrity of the district or

adjoining district.

The Chair would note that there already is antenna on these buildings. That this is a congested -- not congested but a heavily traffic commercial area and it's on a building that has a substantial billboard. So the impact of what is being proposed is quite minimal in terms of the adjacent areas.

The Special Permit would be granted on the condition that the work proceed in accordance with the plans submitted by the petitioner, prepared by Advanced Engineering Group, PC, the cover page which will be initialed by the Chair. And also in accordance with the photo simulations submitted by the petitioner, also prepared by Advanced Engineer Group, the cover page which will be initialed by the Chair. And on the further condition that the -- and erecting these antenna that you do whatever is required to reduce

the visual impact of the proposed antenna, specifically through the use of materials that in texture and color blend with the materials to which the facilities are attached to the extent as much as possible.

On the further condition that if you abandon the use of the use on this building, that you'll promptly remove the antenna on the building.

And the last condition that if you want to replace or upgrade this equipment, that we're proposing tonight, that you would have to seek a new Special Permit from us. There's no right to regulate or upgrade without further approval from this Board.

On that basis, I would move the Special Permit be granted. All those in favor, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in

favor. Motion granted.

(Alexander, Hughes, Sullivan,  
Heuer, Myers.)

PETER COOK: Thank you very much.

(Whereupon, a discussion was  
held off the record.)

(10:30)

(Sitting members: Constantine Alexander,  
Tim Hughes, Brendan Sullivan, Tad Heuer,  
Douglas Myers.)

CONSTANTINE ALEXANDER: Okay. The  
Chair will now hear -- the Board will now  
hear the earlier adjourned case at 22  
Tremont Street. Want to come forward and  
show us your handiwork?

Sean, have you seen what they have done?

SEAN O'GRADY: I have not.

CONSTANTINE ALEXANDER: Why don't you describe for us particularly what you've done to amend, what you're proposing to do from what was originally proposed.

DAVID WHITNEY: We've revised the third floor plan and developed new elevations along the side of the house. We reduced the length of dormer as we discussed.

We talked last time about the fact that the stairs sort of split the third floor by their nature, and with the bedroom behind we were trying to get a bathroom and closet in front of it and that sort of drove the length of the dormer. We tried and tried to make a bathroom work in front of the stairs without the dormers there. And frankly,

we couldn't make it work. However, by making some compromises and sacrifices in how we plan the bedroom and how the bedroom was furnished, we take the length away from the other end of the dormers as well. I mean, instead. We talked about trying to get down to a length of 19 feet. We only got down to 18. But again instead of shrinking it from the front of the house, we're taking it off from that.

CONSTANTINE ALEXANDER: So we're looking at an 18-foot dormer that goes to the ridge line.

DAVID WHITNEY: Yes.

CONSTANTINE ALEXANDER: And to the front of the building.

DAVID WHITNEY: Although the eave details will continue through.

TAD HEUER: And that's essentially symmetrical if it's centered in the middle of the -- about eight feet in the front and about eight feet from the back?



DAVID WHITNEY: Approximately.

CONSTANTINE ALEXANDER: Comments?

TIM HUGHES: I was good with the other one.

CONSTANTINE ALEXANDER: Say it again?

TIM HUGHES: I was good with the other one. I can't object to this one.

CONSTANTINE ALEXANDER: I think for myself I appreciate your accommodating some of our -- my knit picking comments. But you have made a good faith effort to coming closer to the dormer guidelines. I for one appreciate.

DAVID WHITNEY: Thank you. Appreciate being able to come back tonight rather than waiting until June.

TAD HEUER: I appreciate that we have the full set of the plans that we never see on redrafts.

DOUGLAS MYERS: I would agree with the Chair. I'm happy to support this.

CONSTANTINE ALEXANDER: Ready for a motion?

The Chair moves that a variance be granted to the petitioner to add dormers, relocate windows within the required setback, replace and revise a porch roof within the required setback.

The variance will be granted on the condition that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner. You have a non-conforming structure. It's a structure that's being restored to its original single-family use and requires additional living space.

That the hardship is owing to special circumstances especially affecting you, and that hardship being essentially you're talking about a non-conforming structure so that any modification requires zoning relief.

And that desirable relief may be

granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the ordinance.

The Chair will note that what you're proposing to do will really increase the viability of the structure. It is consistent with the residential nature of the neighborhood.

That there's been a good faith effort to comply as closely as possible with the dormer guidelines of the city.

That there has -- this project is supported by abutters.

That the relief being sought is actually inevitable because of the non-conformance of the structure but it's also relatively modest. It's only a variance from the left side setback requirements, and that it allows the petitioner to correct sufficient construction on the third floor and to

make the third floor code compliant.

This variance will be granted on the condition that the work proceed in accordance with plans submitted by the petitioner prepared by the petitioner's architect David Whitney, and the cover page -- there's many pages, but the cover page of which has been initialed by the Chair, and as modified by three sheets submitted by the petitioner, all of which will be initialed by the Chair.

All of those granting relief on this basis, say "Aye."

BRENDAN SULLIVAN: One thing I'll do is maybe change the dimensional form to reflect the new changes just so that the document catches up to that.

CONSTANTINE ALEXANDER: Very good suggestion. You follow what he's saying?

DAVID WHITNEY: I do although --

CONSTANTINE ALEXANDER: Clearly some of the numbers have changed.

DAVID WHITNEY: All right.

CONSTANTINE ALEXANDER: Yes, just make those changes and the numbers.

Are we ready for a motion? All those in favor, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Finally, good luck.

(Alexander, Hughes, Sullivan, Heuer, Myers.)

GOJEB FREHYWOT: Thank you.

CONSTANTINE ALEXANDER: Thank you for your patience.

(Meeting adjourned at 10:30 p.m.)

**C E R T I F I C A T E**

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a  
Certified Shorthand Reporter, the  
undersigned Notary Public, certify that:

I am not related to any of the  
parties in this matter by blood or  
marriage and that I am in no way  
interested in the outcome of this matter.

I further certify that the testimony  
hereinbefore set forth is a true and  
accurate transcription of my stenographic  
notes to the best of my knowledge, skill  
and ability.

**IN WITNESS WHEREOF**, I have hereunto  
set my hand this 8th day of April 2009.

---

Catherine L. Zelinski  
Notary Public  
Certified Shorthand Reporter  
License No. 147703

My Commission Expires:  
April 23, 2015

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